

The Formation of Electronic Contracts in Chinese E-Commerce: Electronic Offers, Electronic Acceptances, and Procedural Regulation

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ABSTRACT

Electronic contracts have become a common form of contract formation in e-commerce transactions, but their electronic and platform-based nature has made the distinction between offers and acceptances more complex. This article focuses on the formation of electronic contracts in Chinese e-commerce, with electronic offers and electronic acceptances as the main line of analysis. Under the framework of the Civil Code of the People's Republic of China, the E-Commerce Law of the People's Republic of China, and the Electronic Signature Law of the People's Republic of China, it examines the legal nature of product page information, the effect of order submission, the role of payment, and the regulation of standard terms. It argues that electronic contract formation should be assessed within the overall transaction process rather than by isolated procedural steps. On this basis, the article proposes to refine the rules on webpage information, clarify the consequences of order submission, restrict the abuse of standard terms, and strengthen platform governance, so as to balance transaction efficiency, consumer reliance, and the legitimate interests of e-commerce operators.

KEYWORDS

Electronic Contracts; E-commerce Contracts; Electronic Offers; Electronic Acceptances; Contract Formation.

1. INTRODUCTION

With the widespread adoption of internet technology, mobile payments, and online platforms, social transactions are no longer limited to paper contracts and in-person signatures. Electronic contracts, which rely on data messages as their medium, offer advantages such as rapid transmission, convenient execution, lower costs, and fewer spatial or temporal constraints. They have gradually become a common form of contract formation in e-commerce activities. According to the *Statistical Report on China's Internet Development* released by the China Internet Network Information Center, China's internet user base has exceeded 1.1 billion, and mobile internet access remains the dominant mode of internet use. Online shopping has become an important part of daily consumption, and the role of electronic contracts in transaction formation has become increasingly prominent.

In the process of concluding e-commerce contracts, the most contentious issue is the determination of electronic offers and electronic acceptances. The rules on offers and acceptances in the Contract Section of the *Civil Code of the People's Republic of China* (hereinafter referred to as the "*Civil Code*") remain the fundamental basis for determining contract formation. Online transactions, however, involve product page displays, shopping carts, order submissions, online payments, system feedback, order confirmations, and shipment by merchants. These procedural steps make the

distinction between offers and acceptances more prone to dispute. Whether product information published by a merchant constitutes an offer or an invitation to offer, whether a consumer's order submission and payment constitute acceptance or a new offer, and whether the contract is formed upon order submission, payment, order confirmation, or shipment may all affect the formation of the contract and the allocation of liability. Although e-commerce contracts still rely on offer and acceptance as their basic structure, their forms of expression differ from those of offline transactions.

This article focuses on the formation process of electronic contracts, with electronic offers and electronic acceptances as the main line of analysis. Under the framework of the *E-Commerce Law of the People's Republic of China* (hereinafter referred to as the "*E-Commerce Law*"), this article examines the basic concepts, current rules, and practical controversies surrounding the formation of electronic contracts. It focuses on the legal nature of product page information, the legal effect of order submission, the role of payment in contract formation, and the restrictions imposed by standard terms on the time of formation. The aim is to clarify the criteria for determining the formation of electronic contracts and to provide concrete suggestions for improving the procedures for forming electronic contracts in China.

2. THEORETICAL FOUNDATION

2.1. Electronic Offer

An electronic offer refers to an expression of intent made by one party to another in electronic form, such as through data messages, emails, webpages, or automated information systems, indicating a willingness to conclude an electronic contract under certain conditions. Its legal nature is not altered merely because the expression is made electronically. An electronic offer remains an offer under the general rules on offer in the *Civil Code*: it is centered on an expression of intent, aims at the conclusion of a contract, and binds the offeror once it is accepted by the offeree.

Article 472 of the *Civil Code* provides that an offer must meet two conditions: its content must be specific and definite, and it must indicate that the offeror will be bound once the offer is accepted. Electronic offers must still comply with these criteria. Whether information regarding goods or services constitutes an electronic offer does not depend on whether it appears in the form of a webpage, email, or data message, but on whether it has sufficient certainty of content and an intent to be bound.

In e-commerce transactions, disputes over electronic offers usually concern whether product or service information published by an e-commerce operator constitutes an offer. Article 49 of the *E-Commerce Law* provides that where the product or service information published by an e-commerce operator meets the conditions of an offer, a contract is formed when the user selects the product or service and successfully submits an order; where the parties have otherwise agreed, such agreement shall prevail. It also prohibits e-commerce operators from stipulating, through standard terms or other means, that a contract is not formed after the consumer has paid the price. If standard terms or similar provisions contain such content, that content is invalid. This provision does not automatically treat all product information on webpages as an offer. The premise remains that the information must meet the conditions of an offer, and the determination should still be made by considering the content of the information, the transaction process, and the parties' expressions of intent.

The determination of an electronic offer cannot stop at the mere fact of webpage display. Where a product page clearly states key information such as the product name, specifications, quantity, price, payment method, method of performance, and shipping time, and the consumer can complete the transaction by selecting the product and submitting an order through the platform process, the page information usually goes beyond general commercial promotion and may provide a basis for recognizing an electronic offer. If the page only contains a general introduction, the price is uncertain, or further confirmation by the e-commerce operator is required, it is closer to an invitation to offer. Disputes over the time of formation of online shopping contracts often arise from different

understandings of the legal nature of the product page: if the product page constitutes an offer, the user's successful submission of an order constitutes acceptance; if the product page is merely an invitation to offer, the user's submission of an order is usually an offer to the operator, and the contract is formed only when the operator confirms the order or ships the goods.[1]

Different approaches exist in practice regarding the legal nature of product information on webpages. One approach treats specific and definite product information as an offer, so that the consumer's successful submission of an order constitutes acceptance and forms the contract; payment of the price may further support the finding that the consumer accepted the transaction terms. Another approach gives greater weight to platform rules and commercial practices, treating the product page as an invitation to offer, the consumer's order submission as an offer, and the operator's order confirmation or shipment as acceptance. Payment should not be treated as a necessary condition for the formation of electronic acceptance, but it may serve as an important factual basis for determining whether the consumer has accepted the transaction terms.

Standard terms may also affect the time of contract formation. Lawful and reasonable transaction rules that do not infringe upon consumers' main rights may be considered in individual cases. Standard terms that state that a contract remains unformed even after the consumer has paid the price, or that exclude or reduce the e-commerce operator's primary obligations, should be strictly limited. Where a consumer has selected the product, submitted an order, and paid the price in accordance with the webpage information, the operator's reliance on standard terms to deny contract formation is likely to undermine the consumer's reasonable reliance on the online transaction process and weaken transaction security in e-commerce.[2]

Electronic offers do not depart from the general rules on offer under the *Civil Code*, but they cannot be understood solely through the experience of offline transactions. Webpage information, the order process, payment, and standard terms should be assessed together. If the webpage information meets the conditions of an offer, the user's successful submission of an order constitutes acceptance. If the webpage information is only an invitation to offer, the user's order submission is usually an offer to the e-commerce operator, and the formation of the contract requires the operator's confirmation or an act of acceptance, such as shipment. The basic criteria remain those governing offers, but their application must take account of the transaction structure of e-commerce.

2.2. Electronic Acceptance

Acceptance is the expression of intent by the offeree to agree to an offer. Electronic acceptance does not alter the legal nature of acceptance; it only changes the manner in which acceptance is made. Where the offeree expresses agreement with the content of an electronic offer through electronic means, such as electronic data interchange, email, clicking a confirmation button, or submitting an order, this may be deemed electronic acceptance. Online payment may further support the finding that the consumer has accepted the transaction terms, but it should not be treated as an independent or necessary condition for the formation of acceptance. Although transaction negotiations may take place online, if the acceptance is ultimately made offline through oral, written, or physical means, it should not be classified as electronic acceptance. The key to electronic acceptance lies not in whether the transaction occurs in cyberspace, but in whether the intention to accept is expressed through electronic means.

Article 479 of the *Civil Code* provides that acceptance is the expression of the offeree's consent to the offer. Electronic acceptance must still comply with the general rules governing acceptance: it must be made by the offeree, reach the offeror within the validity period of the offer, and be consistent with the content of the offer. If the offeree changes substantive terms such as the subject matter, quantity, quality, price, performance period, or method of performance, the expression no longer constitutes acceptance but should be regarded as a new offer. An acceptance received after the

deadline generally does not take effect, unless the offeror promptly notifies the offeree that the acceptance is valid.

Acceptance is usually made by notice, but it may also be made by conduct where commercial practice, the content of the offer, or the parties' conduct sufficiently indicates an intention to accept. In e-commerce transactions, acts such as clicking to confirm or submitting an order may serve as acceptance within the specific transaction structure. Payment may be considered together with other transaction steps, but it should not replace the analysis of whether the webpage information constitutes an offer and whether the order submission expresses acceptance. Silence or mere inaction generally cannot constitute acceptance unless the law, the parties' agreement, or commercial practice gives it the meaning of acceptance.

In e-commerce transactions, the most common form of electronic acceptance is the user's submission of an order in accordance with the platform's procedures. Where the information regarding goods or services published by the e-commerce operator is specific and definite and already constitutes an electronic offer, the consumer's selection of goods and successful submission of an order may generally be deemed acceptance, and the contract is thereby formed. Payment of the price may serve as an important factual basis for determining whether the consumer has accepted the transaction terms and performed the payment step, but it should not be set as a necessary condition for the formation of electronic acceptance. If the order details display key information such as the product name, specifications, quantity, price, shipping date, and responsibility for shipping costs, this further indicates that the transaction terms between the parties have been specified. If an e-commerce operator denies the formation of the contract after the consumer has successfully submitted an order, this is likely to undermine the security of online transactions and the consumer's reasonable reliance.[1]

The distinctiveness of electronic acceptance is mainly reflected in the manner in which it is made, the method of transmission, and the determination of its effectiveness. Electronic acceptance may be made through interactive means such as instant messaging, online customer service, or real-time transaction systems, or through non-interactive means such as email, EDI, or platform order systems. The distinction between interactive and non-interactive methods does not depend on whether the parties are in the same physical space, but on whether they can communicate and respond in real time. Where acceptance is made through real-time interactive tools, it is generally made immediately; where acceptance is made through non-real-time data messages, it must reach the offeror within a reasonable period, and its arrival serves as the basis for determining its effectiveness.

The rules governing the arrival of data messages are a key feature distinguishing electronic acceptance from offline acceptance. If the offeror designates a specific system to receive data messages, the data message is deemed to have arrived when it enters that specific system. If no specific system is designated, arrival should be determined by when the offeror knows or should have known that the data message has entered the system. Whether electronic acceptance has arrived cannot be determined solely by whether the acceptor clicks "send," "submit," or "confirm"; it must also be assessed by considering whether the data message has entered the offeror's receiving system.

When automated information systems are involved in transactions, the attribution of electronic acceptance requires clarification. In EDI transactions, platform order systems, or other automated transaction scenarios, acceptance may not be made individually by natural persons but by automated information systems pre-configured, controlled, or used by the parties. Expressions of intent made by automated information systems in accordance with preset rules should, in principle, be attributed to the party that configures, controls, or uses the system. The term "electronic agent" should not be used here, so as to avoid inconsistency with the concept of "automated information systems" under the *E-Commerce Law*.

Although electronic acceptance has a high degree of immediacy, the rules governing withdrawal remain relevant. Article 485 of the *Civil Code* provides that acceptance may be withdrawn, and the

notice of withdrawal must reach the offeror before or at the same time as the acceptance. In electronic transactions, withdrawal of acceptance is difficult in practice, but circumstances such as network outages, system crashes, or transmission delays may still cause the notice of withdrawal to reach the offeror before or at the same time as the acceptance. Once acceptance has reached the offeror and the contract has been formed, the matter no longer concerns withdrawal of acceptance. It should instead be handled under the rules on contract revocation, termination, or defects in validity.

2.3. Electronic Contracts

The development of rules governing electronic contracts is closely connected with the legal recognition of data messages. The *UNCITRAL Model Law on Electronic Commerce* (hereinafter referred to as the “*Model Law on Electronic Commerce*”) adopts the principles of non-discrimination, technological neutrality, and functional equivalence. Its purpose is not to create an entirely new type of contract, but to recognize that electronic information may, under certain conditions, perform functions equivalent to those of traditional written documents. Where electronic information can be retrieved, preserved, and accessed, its legal validity should not be denied solely because it is in electronic form.

Electronic Data Interchange (EDI) was an important technological form in the early practice of electronic contracts. It usually refers to the transmission of structured information between computer systems in accordance with agreed standards. In e-commerce transactions, parties may exchange orders, shipping information, settlement data, and other transaction information through electronic communication networks. The significance of EDI lies not in changing the rules on contract formation, but in enabling the automatic generation, transmission, and preservation of information relating to offers, acceptances, and performance.

Chinese law does not provide a single unified statutory definition of “electronic contracts,” but it has established relevant rules on contract form, electronic signatures, and e-commerce transaction procedures. The *Civil Code* defines a contract as an agreement between civil entities to establish, modify, or terminate a civil juristic relationship. It also provides that data messages, including those exchanged by electronic data interchange or email, are deemed to be in written form if they can tangibly represent their contents and be retrieved for reference at any time. This confirms the legality of electronic contracts in terms of form.

The *Electronic Signature Law of the People’s Republic of China* (hereinafter referred to as the “*Electronic Signature Law*”) addresses the legal effect of data messages and electronic signatures. A reliable electronic signature has the same legal effect as a handwritten signature or seal. The legislative and practical development of electronic signatures in China further supports the functional equivalence between reliable electronic signatures and traditional forms of authentication, while also providing evidentiary support for the formation and performance of electronic contracts.[8] The *E-Commerce Law* focuses on e-commerce transaction practices and provides specific rules on the conclusion and performance of e-commerce contracts. Acts carried out through an automated information system should, in principle, be attributed to the party using that system. China’s rules on electronic contracts are therefore not established by a single statute. They are based on the general contract rules in the *Civil Code*, supplemented by the *Electronic Signature Law* on electronic form and signature validity, and by the *E-Commerce Law* on contract conclusion and performance in e-commerce scenarios. This multi-layered structure also reflects the need to optimize the external system of contract formation rules under the Civil Code, especially when general rules on offer and acceptance are applied to technologically mediated transactions.[6]

Electronic contracts can be understood from the two dimensions of “contract” and “electronic.” A contract is an agreement between civil entities to establish, modify, or terminate civil legal relationships. The term “electronic” indicates that the contract primarily relies on information systems and data messages as its medium. An electronic contract is not a new type of contract separate from

existing contract rules, but a manifestation of contract formation in an electronic environment. Its core remains the parties' mutual consent; what changes are the methods through which consent is formed, transmitted, stored, and proved.

Electronic contracts should not be conflated with e-commerce contracts. Electronic contracts emphasize the electronic form of contract formation, focusing on whether the contract is concluded through the internet or other information networks, or in the form of data messages. E-commerce contracts, in addition to having an electronic form, arise in e-commerce business activities and are usually connected with online platforms, e-commerce operators, consumers, product or service information, and order processes.[3] This article does not discuss all electronic contracts. Its focus is on contracts formed in e-commerce activities through product pages, order submission, online payment, system feedback, and other transaction steps, with data messages serving as the medium of contract formation.

3. RECOMMENDATIONS FOR IMPROVING THE PROCEDURES FOR CONCLUDING ELECTRONIC CONTRACTS IN CHINA

3.1. Refining the Rules for Determining the Nature of Webpage Information

Whether product information on a webpage constitutes an offer or an invitation to offer is a common source of disputes in the conclusion of electronic contracts. The preceding analysis has already explained that the criteria should return to the general rules on offers in Book Three (Contracts) of the *Civil Code*. At the level of institutional improvement, the focus should no longer be on restating the elements of an offer, but on clarifying the disclosure obligations of platforms and e-commerce operators in the design of product pages.

Product pages should present the core information that affects consumers' transaction decisions, including the product name, specifications, model number, quantity limits, price, promotional conditions, inventory status, delivery method, shipping time, and return and exchange rules. Where products are displayed through livestreaming, short videos, or image-text descriptions, different forms of presentation should not contain substantive inconsistencies. The more complete the page information and the more closed the transaction process, the stronger the consumer's expectation will be after placing an order. In such circumstances, webpage information is more likely to be treated as an offer rather than general commercial promotion.

If an e-commerce operator does not intend the product information on a webpage to constitute an offer, this should be made clear before the consumer makes a transaction decision. In transaction models such as pre-sales, eligibility reviews, limited-quantity lotteries, or manual confirmations, the conditions for contract formation may be clarified through prominent notices. Such notices should not be hidden in lengthy user agreements or placed in inconspicuous corners of the page.

3.2. Clarifying the Procedural Consequences Following Successful Order Submission

Successful order submission is a key procedural node in the formation of electronic contracts. Where webpage information meets the conditions of an offer, the user's successful submission of an order should constitute acceptance. Where webpage information is only an invitation to offer, the user's order submission should be treated as an offer to the e-commerce operator. Platforms and e-commerce operators should clearly specify the legal consequences of order submission within the transaction process, instead of relying on platform rules to explain whether a contract has been formed only after a dispute arises.

Platform pages may provide concise prompts near buttons such as "Submit Order," "Confirm Purchase," or "Pay Now" to inform users of the legal consequences of clicking them. Such prompts

should be simple and direct. They may distinguish between different scenarios, such as “Contract formed upon order submission,” “Order requires merchant confirmation to form,” or “Payment requires further review.” The point of formation may vary depending on the transaction model, but it must be clear, explicit, and known to consumers before they place an order.

Payment of the purchase price should not be established as a general prerequisite for contract formation. Payment may serve as an important indication that the consumer has accepted the transaction terms and performed the payment step, but where webpage information meets the conditions of an offer, successful order submission is sufficient to constitute acceptance. If an e-commerce operator claims that no contract has been formed after receiving payment, such a claim should be subject to stricter scrutiny. This approach protects consumers from bearing payment risks and prevents e-commerce operators from retaining unilateral discretion over whether a contract is formed.

3.3. Restricting the Abuse of “Otherwise Agreed” Through Standard Terms

The phrase “the parties have otherwise agreed” should not be interpreted as allowing an e-commerce operator to unilaterally alter the rules of contract formation. In e-commerce transactions, user agreements, platform rules, and order terms are usually drafted in advance by platforms or e-commerce operators, while consumers have limited room for substantive negotiation. A distinction should therefore be made between genuine individual negotiation and standard terms. Rules unilaterally drafted by an e-commerce operator should not be equated with mutual consent.

Contract formation clauses resulting from individual negotiation may be respected if their content is clear and does not violate mandatory legal rules. Where an e-commerce operator stipulates through standard terms that “the contract is not formed even after payment,” “the contract is formed only upon shipment,” or “the e-commerce operator has the right to cancel the order unilaterally,” such clauses should be reviewed in light of the manner of notice, the placement of the clause, the clarity of the content, and the reasonableness of risk allocation. If the clause is hidden, insufficiently highlighted, or effectively exempts the operator from major obligations or excludes the consumer’s main rights, it should not be used as a basis for denying contract formation.

In general online shopping contracts, an e-commerce operator should not be allowed to rely on standard terms to deny contract formation after the consumer has paid the price. Special transaction models may have specific formation rules, but such rules must be based on prominent notice, clear transaction conditions, and reasonable risk allocation. The purpose of regulating standard terms is not to reject all platform rules, but to prevent e-commerce operators from exploiting their rule-making advantage to evade responsibilities after an order has been formed.[2]

3.4. Establishing a Mechanism for Classifying and Handling Abnormal Orders

Low-price marketing, malicious order cancellation, system errors, pricing errors, and inventory anomalies should not be treated in the same way. Where an e-commerce operator intentionally attracts consumers to place orders through unusually low prices and then cancels the orders on grounds such as insufficient inventory or system malfunction, the operator should bear heavier responsibility. The publication of product pages may create transactional reliance. As the party publishing information and managing the transaction system, the e-commerce operator should bear a duty to manage core information such as price, inventory, and shipping time.

Genuine system errors, obvious pricing errors, and inventory synchronization anomalies require separate treatment. It is not appropriate to conclude mechanically that the e-commerce operator must perform the order in all such cases. Relevant factors include whether the error was obvious, whether the consumer acted in good faith, whether the operator corrected the error promptly, whether the order quantity was abnormal, and whether there was bulk profiteering. The reasonable reliance of ordinary

consumers who place orders based on normal page information should be protected. Consumers who knowingly place bulk orders to profit from obviously abnormal prices should not receive the same level of protection.

Platforms and e-commerce operators may establish procedures for handling abnormal orders. Once pricing, inventory, or system anomalies are discovered, disputed orders should be temporarily suspended, the reasons should be explained, data records should be preserved, and consumers should be offered options such as refunds, compensation, or continued performance where appropriate. Operators should not cancel orders merely by citing “system error,” nor should they shift all business risks to consumers. Clearer rules for abnormal orders can reduce disputes over contract formation and responsibility for performance.[4]

3.5. Strengthening Platforms’ Governance Responsibilities Regarding Contract Formation Procedures

The formation of electronic contracts relies heavily on platform systems. Platforms do not merely provide trading venues; they also shape product display, order generation, payment status recording, user reviews, and transaction data retention. Improving electronic contract formation procedures should not depend solely on the obligations of individual e-commerce operators. Platform rules and technical mechanisms should also be used to reduce transaction disputes.

Platforms should ensure that transaction processes are clear and identifiable. Product pages should distinguish product information, promotional information, contract formation conditions, and after-sales rules. Order pages should clearly indicate the status after order submission, such as “Pending Payment,” “Paid,” “Awaiting Merchant Confirmation,” “Contract Formed,” and “Awaiting Shipment.” Before submitting an order, consumers should have the opportunity to verify information such as the product, quantity, price, address, and payment method, and to correct input errors.

Platforms should also strengthen transaction record-keeping. Product page snapshots, price change records, inventory status, order submission time, payment status, and the reasons for order confirmation or cancellation should be retrievable and preserved. In the event of a dispute, platform data often serves as important evidence for determining the nature of webpage information, the effect of order submission, and the responsibility of the e-commerce operator.[7] Without such transaction records, the cost of consumer rights protection increases, and operators may use opaque system rules to evade responsibility.

For operators that engage in malicious low-price traffic diversion, frequent order cancellation, or the use of standard terms to evade liability, platforms may take management measures in accordance with platform service agreements and transaction rules. Measures such as deduction of security deposits, traffic restrictions, credit rating downgrades, and consumer compensation should be based on clear standards and appeal procedures, so that platform governance itself does not become a new form of unilateral control. Since platform rules are continuous, technical, and often unilaterally formulated, the notice, amendment, and application of important rules should remain transparent.[5]

The improvement of China’s electronic contract formation procedures should focus on the nature of webpage information, the consequences of order submission, the regulation of standard terms, the handling of abnormal orders, and the governance of platform rules. E-commerce transactions do not require a separate set of rules outside Book Three (Contracts) of the *Civil Code*. Rather, within the framework of offer and acceptance, clearer rules should be developed for the time of contract formation and the allocation of liability, taking into account the technical characteristics and risk distribution of platform-based transactions.

4. CONCLUSION

In e-commerce transactions, efficiency and security are closely connected. Excessive emphasis on the autonomy of e-commerce operators may weaken consumers' trust and disrupt the order of online transactions. Recognizing contract formation too mechanically or too early may also increase the risks borne by e-commerce operators in cases involving pricing errors, inventory discrepancies, or system failures. The improvement of electronic contract formation procedures should therefore be based on the general structure of offer and acceptance, while giving sufficient attention to the technical features and risk allocation of platform-based transactions.

China's rules on the formation of electronic contracts already have an institutional foundation. The *Civil Code* provides the general rules on contract formation, the *E-Commerce Law* responds to transaction issues in e-commerce scenarios, and the *Electronic Signature Law* confirms the legal effect of data messages and electronic signatures. The remaining problem is not the absence of basic rules, but the need to further clarify their application in specific transaction processes, including the nature of webpage information, the effect of order submission, the role of payment, the validity of standard terms, and the handling of abnormal orders. Future improvement should focus on making contract formation rules clearer, more stable, and more operational. Webpage information, order submission, payment, system feedback, and shipment should not be examined in isolation, but should be assessed within the overall transaction structure. A clearer coordination among the *Civil Code*, the *E-Commerce Law*, and the *Electronic Signature Law* can help protect consumers' reasonable reliance, safeguard the legitimate interests of e-commerce operators, and promote the orderly development of e-commerce.

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