

Concluding Contracts for the Sale of Goods Through E-Commerce Platforms and Recommendations for the Improvement of Vietnamese Law

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Abstract

The conclusion of contracts through electronic means has evolved and is now applied across various economic sectors. Contracts for the sale of goods are no exception and are frequently concluded on e-commerce trading platforms. Although commercial law includes provisions regulating the conclusion of contracts for the sale of goods through this method, practical experience indicates that some provisions are inconsistent and do not align with the general regulations on contract conclusion in the Civil Code. This results in practical issues during contract implementation. This article analyzes several practical issues in concluding contracts for the sale of goods on e-commerce trading platforms and proposes recommendations for improvement.

Keywords: *Contract Conclusion, Contracts for The Sale of Goods, E-Commerce Trading Platforms, E-Commerce Website.*

Introduction

A contract for the sale of goods forms the basis for parties to engage in and perform sales activities in practice. contracts for the sale of goods concluded on e-commerce trading platforms are agreements made through e-commerce websites established by merchants or other organizations. In these transactions, the seller and buyer do not need to meet face-to-face to conclude and perform the sales activities; instead, the contract for the sale of goods is established in the form of electronically created, sent, received, and stored information . These sales activities occur on e-commerce websites, which are electronic information sites set up to serve part or all of the processes of sales or service provision, from displaying and introducing goods and services to contract conclusion, service provision, payment, and post-sales services . Common examples of such websites include Shopee, Lazada, Sendo, and Tiki.

Contracts for the sale of goods are established between two parties: the seller and the buyer, where one party must be a trader according to the 2005 Commercial Law, including legally established economic organizations; individuals engaged in independent, regular commercial activities with business registration . Additionally, organizations and individuals not categorized as traders can also become parties to a contract for the sale of goods. Besides the two main parties, there are third parties such as the owners or operators of the e-commerce websites, providing the environment for the seller and buyer to perform the contract for the sale of goods. When establishing the contract, the seller and buyer agree on the quantity and quality of goods, delivery location and time, price, payment method, etc., where the seller is obligated to deliver the goods, transfer the ownership to the buyer, and receive payment; the buyer is obligated to pay the seller, receive the goods, and acquire ownership as agreed .

Practical experiences have shown that the process of concluding contracts for the sale of goods through e-commerce platforms presents various inadequacies, which adversely affect the rights of the involved parties. These issues stem from several legal provisions that remain unsuitable and inconsistent, such as regulations on pre-agreed terms and the conclusion of contracts on e-commerce platforms. Consequently, there is an urgent need for solutions aimed at perfecting the legal framework to ensure the efficiency of concluding contracts for the sale of goods through e-commerce platforms.

Pre-determined Agreements In Contracts For The Sale Of Goods On E-commerce Platforms

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The principle of freedom to contract is considered a fundamental principle in the conclusion and execution of contracts generally. Under this principle, parties are free to decide the terms of the contract, exercising their autonomy within the bounds of the law, without being subject to any constraints or interference from any party, especially the counterparty in the contract. This principle of autonomy is enshrined in Article 3 of the 2015 Civil Code, which stipulates: "Individuals and legal entities establish, exercise, and terminate their civil rights and obligations on the basis of free and voluntary commitments and agreements. All commitments and agreements that do not violate the prohibitions of the law and are not contrary to social ethics shall be binding upon the parties and must be respected by other parties." Thus, parties have complete discretion in deciding whether to participate in a contract; they have the right to agree upon and choose the content and form of their commitments, provided that they comply with the legal provisions. The essence of contracts for the sale of goods on e-commerce platforms, like other common contracts, lies in the agreement and consensus of the involved parties. However, in contracts for the sale of goods on e-commerce platforms, the contract's contents are mostly pre-determined by the seller, with the buyer merely having the option to accept or reject these terms without the ability to propose changes to suit their preferences. These contracts typically include terms set by the seller for uniform application to all buyers.

Current law includes regulations on the conclusion and execution of contracts on e-commerce platforms, as set forth in Decree No. 52/2013/ND-CP dated May 16, 2013, on e-commerce, and its amendments and supplements by Decree No. 85/2021/ND-CP dated September 25, 2021. These regulations cover matters such as electronic documents in commercial transactions and the conclusion of contracts using the online ordering function on e-commerce websites. However, the existing legal framework lacks specific provisions regarding the pre-agreement of contract terms. Since contracts for the sale of goods on e-commerce platforms are concluded in an electronic environment, the parties do not meet face-to-face, exchange, or negotiate information. Additionally, Decree No. 52/2013/ND-CP stipulates that customers make offers to contract by creating and sending orders using the online ordering function attached to the goods or services on the e-commerce platform. The seller's acceptance or rejection of the offer is communicated in a manner that allows the information to be stored, printed, and displayed in the customer's information system. Furthermore, when accepting a customer's offer to contract, the seller must send a list of all goods or services ordered by the customer, including the quantity, price of each product, and the total contract value. This must include the delivery period or service provision period, along with contact information to allow the customer to inquire about the contract's status if necessary.

Therefore, sellers often unilaterally stipulate contract terms and pre-determine them for the customer to follow. Due to the absence of specific legal adjustments, sellers can draft contract templates with clauses favorable to themselves, potentially disadvantaging buyers when concluding contracts on e-commerce platforms. However, the 2010 Law on Protection of Consumer Rights and the 2015 Civil Code have provisions regarding standard form contracts. For instance, the 2010 Law on Protection of Consumer Rights defines a standard form contract as "a contract drafted by a business entity for transactions with consumers." Article 17, Clause 1 of this law specifies: "When entering into a standard form contract, the business entity must provide reasonable time for the consumer to study the contract"; while Article 405, Clause 1 of the Civil Code provides: "A standard form contract is a contract containing terms prepared by one party as a template for the other party to respond within a reasonable time; if the offeree accepts, it is considered to have accepted the entire content of the standard form contract offered by the offeror. The standard form contract must be made public so that the offeree knows or should know its terms." However, these regulations apply only to standard form contracts concluded by traditional means and do not extend to electronic contracts.

Pre-determined or template contracts epitomize the imbalance in information, negotiation ability, and agreement on contract terms. Sellers often have more information about the goods they provide compared to buyers, enabling them to draft contracts with unfavorable terms for buyers, unclear or unequal conditions such as not specifying buyer rights, reducing seller obligations, or using industry-specific terms without clear explanations, making it difficult for buyers to understand. In contrast, buyers only encounter the contract when they need to purchase goods from the seller. Important terms concerning buyer rights, such as price and promotional conditions, are often not clearly expressed in the contract. This significantly affects

buyer rights and the effectiveness of contract conclusion between the seller and buyer. Hence, specific regulations on pre-determined agreements for contracts for the sale of goods on e-commerce platforms are needed to mitigate the current issues arising from the use of such contracts.

The regulations on pre-determined contracts should be based on the foundation of standard form contracts as per the 2015 Civil Code and include characteristics suitable for the nature of contracts for the sale of goods on e-commerce platforms. These regulations should also be amended to address limitations that disadvantage the parties when applying standard form contracts. For instance, Article 404, Clause 6 of the 2015 Civil Code on contract interpretation should be amended as follows: "If the party providing the standard form contract includes terms that significantly violate the legitimate rights and interests of the accepting party, the contract must be interpreted in favor of the accepting party".

This amendment helps prevent the drafting party, who is not one of the direct contracting parties, from subjectively viewing "unfavorable content," thus avoiding potential disputes. Viewing the standard form contract in its entirety and assessing whether a term significantly violates the accepting party's legitimate rights and interests ensures that both parties' rights are protected when concluding the contract. Therefore, improving the legal framework for pre-determined contracts will provide an effective legal basis for the performance of contracts for the sale of goods on e-commerce platforms and the issuance of regulations on standard form contracts when concluding and performing contracts on these platforms.

Regulations on Concluding Contracts for The Sale of Goods on E-commerce Platforms

Although the law has provisions on the conclusion of contracts on e-commerce platforms, which provide a basis for parties to carry out their sale of goods activities, including provisions on offers to contract, the time of contract conclusion, the conclusion process, and the procedures for terminating contracts concerning electronic commerce services, these provisions differ from the rules governing the conclusion and execution of traditional contracts for the sale of goods. Nonetheless, the regulations governing the conclusion of contracts on e-commerce platforms still present certain inadequacies that affect the rights of the parties, particularly the sellers. Specifically:

Firstly, regarding the place of business: A place of business can be understood as the location where the parties conduct specific business activities, such as the sale and exchange of goods and services. Through the place of business, the parties to a sales contract, especially the buyer, can directly conclude the sales contract and carry out their purchase activities. Additionally, the place of business helps the seller establish credibility with customers and attract sales through media channels by providing information about the place of business. Decree 52/2013/NĐ-CP stipulates that "The place of business is a fixed establishment for conducting business activities, excluding temporary supply establishments of goods or services". The decree also states that if the parties do not specify otherwise, each party's place of business is the location indicated by that party. For traditional contracts for the sale of goods, the place of business plays a crucial role as it is where the parties conduct their business or sales activities. Customers can make purchases and conclude contracts directly at the seller's place of business. Sellers need information about the buyer's place of business to facilitate sales activities. In the event of contract execution issues, the buyer can contact the seller to request resolution. However, in contracts for the sale of goods via e-commerce platforms, the parties are not required to provide this business location, as the transactions are conducted on e-commerce websites. However, since contracts for the sale of goods through e-commerce platforms are concluded on e-commerce websites, the parties are not required to conduct their sales or conclude contracts at the place of business. Despite this, the place of business remains a necessary element that sellers must disclose through the information provided on their e-commerce platforms. Additionally, the buyer must provide a delivery address for the seller to deliver the goods, which could be the buyer's place of business, residence, or another location where the seller can deliver and the buyer can receive the goods. This delivery address is chosen by the buyer and may not necessarily be a place of business because, for the buyer, the delivery address is more important. Furthermore, the buyer may be purchasing goods for consumption rather than business purposes, making the business location irrelevant for the buyer.

The business location is not a mandatory element of contracts for the sale of goods via e-commerce platforms and is typically absent during contract execution. Sellers may disclose their business locations on their e-commerce websites, but this is not required. This leads to the issue where buyers may not know the seller's business location, only knowing the seller through the e-commerce platform. Consequently, buyers cannot assess the seller's goods or switch from e-commerce transactions to traditional sales. Lack of information about the seller's business location also diminishes the seller's credibility with buyers, as buyers cannot verify the seller's details. If the seller provides a false business location, this can negatively impact the buyer's purchasing decisions, with no effective legal remedy available. Therefore, regulations concerning the business location need reasonable adjustments to protect the buyer's rights during contract conclusion and execution.

Regardless of whether the seller is an individual or a business entity, selling goods equates to conducting business activities. Sellers concluding contracts for the sale of goods on e-commerce platforms should disclose their business locations to inform buyers and ensure credibility for their goods. Hence, the business location regulation in Clause 7, Article 3 of Decree 52/2013/NĐ-CP should be amended as follows:

"Article 3: Definitions:

...

The place of business is a fixed establishment for conducting business activities, excluding temporary supply establishments of goods or services, except in cases where the seller has no fixed establishment for conducting business activities."

Additionally, a provision on the seller's business location should be added to Article 11 of Decree 52/2013/NĐ-CP:

"Article 11: Place of Business of the Parties

...

The seller's business location must be disclosed on the e-commerce platform. If the seller has no fixed establishment for conducting business activities, the temporary supply establishment of goods may be considered the seller's place of business".

This article stipulates that sellers must disclose their place of business for the buyer's information. The place of business of the seller is not limited to a fixed place of business but may also include a temporary location where the seller provides goods when concluding contracts on e-commerce platforms with the buyer. Additionally, the law should introduce penalties for sellers who deliberately disclose false business location information, affecting the buyer's rights.

Secondly, regarding acceptance of contract conclusion proposals. This activity is undertaken by the seller upon receiving an offer to contract from the buyer. Article 19 of Decree 52/2013/NĐ-CP stipulates that responses to acceptance or non-acceptance of contract conclusion proposals must be made in a suitable form so that the information can be stored, printed, and displayed in the customer's information system. According to Article 379 of the 2015 Civil Code, the party receiving a contract conclusion proposal can withdraw its acceptance notice if the withdrawal notice reaches the proposing party before or at the same time as the acceptance notice. Consider a scenario where the offeree sends its acceptance before the agreed deadline, but for some reason, the offeror does not receive the acceptance by the deadline. The buyer, as the offeree, believes the offeror received the acceptance and the e-commerce contract was established, thus transferring money or arranging transportation to the offeror's warehouse. Upon the goods' arrival, it is discovered that the goods were sold to another party because the acceptance was not received by the deadline. In this case, the buyer incurs damages, specifically transportation costs, without any intentional fault from either party. Due to transmission errors or unforeseen incidents, the offeror's immediate rejection of the acceptance, despite valid reasons, renders the acceptance ineffective. This results in the

seller selling to another party due to not receiving the acceptance on time, while the buyer believed the contract was concluded and prepared to receive the goods.

To avoid harm to the accepting party, the law should supplement the provisions of Article 19 of Decree 52/2013/NĐ-CP. This is to ensure and uphold the principles of honesty and good faith in contract negotiation and performance. Accordingly,

"Article 19: Response to an Offer to Contract

...

if no response is received by the stipulated deadline, the proposing party should immediately notify the accepting party".

Thirdly, regarding the notice inviting a contract proposal. Regulations on invitations to make an offer to contract is not part of the traditional conclusion and execution of contracts for the sale of goods. It is evident that the "invitation to make an offer to contract" is issued before the customer submits an offer to contract. Moreover, the "invitation to make an offer to contract" indicates that there is no binding responsibility on the parties regarding the submission of the offer or the conclusion and execution of the contract. Article 15 of Decree 52/2013/NĐ-CP stipulates that "If an e-commerce website has an online ordering function applicable to each specific good or service introduced on that website, the information introducing the goods, services, and related terms is considered a notice inviting a contract proposal" by the merchant, organization, or individual selling the goods, as per Article 12 of this Decree. The invitation to make an offer to contract is stipulated for transactions on e-commerce websites with an online ordering function. This notice is created in electronic form and includes a proposal to conclude a contract. However, if this notice is sent without a specific recipient, it is merely an invitation to make a contract proposal, unless the notice specifies the sender's obligations upon receiving an acceptance response. In contrast, the 2015 Civil Code stipulates that a contract proposal directed at the public must bind the proposing parties to the offer's terms. Thus, under Decree 52/2013/NĐ-CP, typically only the buyer proposes to conclude a contract, while all information provided by the seller regarding the goods is merely an invitation to propose a contract, without binding the seller to the buyer. This regulation is inconsistent with the 2015 Civil Code, which requires the proposal to bind the proposing party to the offer terms.

Fourthly, concerning the obligation to provide information about contract terms. This is a basic obligation of the parties when concluding contracts; specifically for contracts for the sale of goods on e-commerce platforms, the seller is obligated to provide the buyer with information about the contract terms before concluding and executing the contract. Article 16 of Decree 52/2013/NĐ-CP outlines the obligation to provide contract terms when using the online ordering function on e-commerce websites. An e-commerce website with an online ordering function must provide customers with information about contract terms such as goods or services information, pricing information, general transaction conditions, delivery and shipping information, and payment methods before the customer submits a contract proposal. Thus, the Decree No. 52/2013/ND-CP specifically provides that the offer to contract is made by the customer, but the obligation to provide information about the contract terms falls on the seller. This provision differs from the responsibilities related to the provision of contract terms as outlined in the 2015 Civil Code.

In contrast, the 2015 Civil Code stipulates that the responsibility to provide contract terms lies with the party proposing the contract. This means the party making the contract proposal must present the terms and conditions for the other party to consider acceptance. The 2015 Civil Code ensures that the party making the contract proposal bears responsibility for the terms and conditions they present. Additionally, when the seller accepts the buyer's contract proposal, they must provide the buyer with the following information: a complete list of goods or services ordered, quantities, prices for each product, and the total contract value; delivery or service provision timelines; and contact information for inquiries about contract performance. This information is provided when the seller responds to the buyer's contract proposal. Thus, the obligation to provide information about the contract terms in Decree No. 52/2013/NĐ-CP is inconsistent with the 2015 Civil Code and fails to adequately protect the rights of the parties. Specifically,

the law does not clearly stipulate the seller's responsibility in making an offer to conclude a contract, which should be accompanied by the obligation to provide information about the contract terms. Instead, it imposes restrictions on the buyer, who is not granted the ability to determine the content and specific terms of the contract for the sale of goods between the parties, even though this party makes the offer to conclude the contract while the entire content and specific terms of the contract are determined by the seller.

Fifthly, concerning the termination of contract proposals. The 2015 Civil Code stipulates that the party proposing the contract must specify the response deadline. However, Decree 52/2013/NĐ-CP states that the seller announces the response deadline for contract proposals. If the response deadline set by the seller passes without a response, the contract proposal is terminated. It is evident that while the buyer makes the proposal, the seller announces the response deadline, essentially allowing the seller to set their own response timeline to the buyer's contract proposal. This is unreasonable and contradictory to the 2015 Civil Code.

Moreover, if the seller does not clearly announce the response deadline for the contract proposal, the buyer's contract proposal is valid for 12 hours from the time it is sent. If no response is received within this time, the buyer's contract proposal is considered terminated. Thus, Decree 52/2013/NĐ-CP allows the seller to set the response deadline for the contract proposal and also permits the seller to not set a response deadline, in which case the buyer's proposal automatically terminates after the prescribed time. This regulation creates an inconsistency where the seller has complete control over the contract proposal process on e-commerce platforms. Although the buyer makes the contract proposal, the seller has full discretion over responding to the proposal. The buyer has almost no authority in the proposal process for their own contract.

Given these issues, the regulations on concluding contracts via e-commerce platforms need to be revised to align with the 2015 Civil Code and ensure the parties' rights are protected during contract negotiation and execution.

Accordingly, the provision regarding the notice inviting a contract proposal should be abolished, and only the actual contract proposal from the parties should be recognized. This amendment aims to complete and unify the regulations on contract proposals in Decree 52/2013/NĐ-CP with the provisions of the 2015 Civil Code. The 2015 Civil Code generally governs the conclusion of contracts between parties, wherein both the buyer and the seller have the right to make a contract proposal. Both parties have equal rights to propose the conclusion of a contract. When proposing a contract, the proposing party must include specific information about the transaction involving the goods in the contract, and the proposing party must also specify the response deadline for the contract proposal, rather than binding the validity of the contract proposal itself. This regulation ensures equal rights for both parties in setting the response deadline for the contract proposal, without giving the seller full control, and it allows the buyer to exercise and protect their legitimate rights and interests when participating in contract conclusion.

In summary, the law should stipulate that when a party makes a contract proposal, it must include the following specifics:

- The contract proposal is addressed to the public or a specific party.
- The binding responsibility of the proposing party towards the recipient.
- The terms and conditions of the contract, including information such as the name, quantity, and type of goods; the method and timeline for delivery; the contract value and details related to the payment method chosen by the customer.
- The response deadline for the contract proposal must be explicitly provided by the proposing party.

The continuous development of e-commerce has rendered some legal provisions obsolete, necessitating a review and systematization of regulations on contracts for the sale of goods on e-commerce platforms to construct and complete the legal framework for contract execution. Reviewing and systematizing helps identify conflicting, overlapping, or unsuitable regulations in relation to general legal documents, current practices, and the developmental direction of contracts for the sale of goods on e-commerce platforms.

Although Decree 52/2013/NĐ-CP has been amended and supplemented by Decree 85/2021/NĐ-CP, the provisions regarding e-commerce contract conclusion remain unchanged. Meanwhile, the 2015 Civil Code, effective after Decree 52/2023/NĐ-CP, provides regulations on contract conclusion that balance the rights and obligations of the parties, thereby protecting the interests of the buyer, who is generally considered the weaker party in a contract for the sale of goods. Therefore, issuing new regulations and documents to build a comprehensive legal system for e-commerce contracts is necessary to ensure coherence, uniformity, legality, and constitutionality, thereby fostering a healthy and secure legal environment.

Conclusion

Contracts for the sale of goods on e-commerce platforms play a crucial role in current economic development. While the regulations on concluding contracts for the sale of goods on e-commerce platforms are specified in Decree 52/2023/NĐ-CP, these regulations are inadequate, do not reflect a balance of interests between the buyer and the seller, and conflict with the 2015 Civil Code. A prominent example is the pre-determined agreements in contracts for the sale of goods on e-commerce platforms or the regulations concerning the conclusion of contracts for the sale of goods on e-commerce platforms, such as the regulations regarding the place of business of the parties, the acceptance of an offer to conclude a contract, and the obligation to provide information about the contract terms. Consequently, the author has analyzed various difficulties and inadequacies in the legal provisions concerning the conclusion of contracts for the sale of goods via e-commerce platforms, such as pre-determined contract terms, notice inviting contract proposals, the business location of parties, and responses to contract proposals. Based on this analysis, the author proposes recommendations to address these issues and improve the legal regulations on concluding contracts for the sale of goods via e-commerce platforms.

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