E-Commerce Contract Formation After Payment: Legal Boundaries of Otherwise Agreed Clauses under Chinese Law

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Abstract. In the practice of e-commerce, the root cause of disputes over when a contract is formed after consumers pay the price lies in the potential conflicts in the interpretation of otherwise agreed by the parties between Article 491 of the Civil Code and Article 49 of the E-commerce Law of the People's Republic of China. This paper aims to clarify the divergence in the application of these laws, define the boundaries of the certainty of contracts after payment, and propose a three-dimensional compliance review model consisting of legal precedence review, procedural justice review, and substantive fairness review. The study concludes that the rules governing the formation of contracts after payment are mandatory in nature, designed to protect consumers' reliance interests. A valid otherwise agreed clause shall not override the formation of the contract itself; instead, it may only make reasonable adjustments to the effectiveness of the contract or the manner of performance on the premise of fairness. This research contributes to improving the clear operational framework, promoting the unified application of laws, and facilitating the legalization and operational efficiency of e-commerce while safeguarding transaction security.

Keywords: E-commerce Law, Civil Code, Contract Formation, Otherwise Agreed Clauses, Compliance Model

1 Introduction

With the continuous advancement of online transactions, operators often cite clauses in user agreements such as payment only constitutes a pre-contractual offer and the contract shall be formed only upon inventory confirmation, as grounds to unilaterally cancel orders after consumers have completed them, thereby giving rise to frequent disputes between consumers and operators. Article 49 of the E-commerce Law of the People's Republic of China explicitly stipulates that a contract is formed when the order is successfully submitted, and specifically prohibits operators from stipulating through standard terms that a contract shall not be formed after payment. However, when Article 491 of the Civil Code incorporated this rule, it added a proviso stating that unless otherwise agreed by the parties. Differences in legislative texts have led to

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divergence in application between judicial practice and commercial compliance, undermining the legitimate certainty of consumers' contractual rights after payment. Therefore, discussing the inherent connection between the two laws and defining the legal boundaries of otherwise agreed-upon clauses has become the key to balancing the efficiency and fairness of e-commerce transactions [1].

2 Literature Review

Existing studies have mainly given rise to theoretical discussions and practical divergences at three levels centering on the issue of contract certainty after payment:

2.1 Core Dispute: Consideration of Rule Concurrence and Legislative Intent

The current core dispute focuses on the interpretation of normative conflict between the proviso of the Civil Code and the prohibitory provisions of the E-Commerce Law. Current academic research mainly concentrates on two perspectives:

One view upholds the doctrine of priority of special law, namely that the prohibitory provision under Paragraph 2 of Article 49 of the E-Commerce Law applicable to e-commerce shall take precedence in application. Such legislative intent is to provide rigid protection for consumers and preclude standard terms from overriding the fundamental rules of contract formation. Meanwhile, the core of this dispute lies in how to interpret the status of the "proviso" in e-commerce transactions. The doctrine of priority of special law holds that the E-Commerce Law, as a special law regulating e-commerce, is designed to fill the regulatory gap of the Civil Code in emerging e-commerce business forms. Therefore, for high-frequency, low-value transactions between e-commerce platforms and consumers, the special law shall apply preferentially to realize regulatory efficiency.

Another view is the doctrine of supplementation by new law, namely that the Civil Code, as the fundamental law, introduces the "proviso" to respect freedom of contract and reserve space for the sustainable development of e-commerce business models[2]. This doctrine argues that given the ambiguous stipulation on the time of contract formation in the Civil Code, the supplementation by the E-Commerce Law is intended to adapt to specific commercial logics, such as complex transaction scenarios including pre-sale models and installment payments.

2.2 Level Dispute: Examination of Procedural Legality and Substantive Fairness

The dispute extends to the dimension of regulations applicable to relevant standard terms, holding that specific clauses must be examined in accordance with the rules on standard terms under the Civil Code[3]. At the procedural level, the discussion centers on whether operators have fulfilled the obligation of reasonable reminder in respect of such material terms; in practice, controversial points include whether the reminder is sufficiently conspicuous and whether it is provided at key decision-making nodes. At the substantive level, the discussion focuses on judging whether a clause "unreasonably" exempts the operator from liability or restricts the consumers' primary rights. In e-commerce practice, for instance, indefinitely postponing contract formation until the delivery of goods essentially leaves consumers in a state without contractual protection after payment, which is likely to be identified as a significant imbalance of rights and obligations [4,5].

2.3 Value Dispute: Balance Between Rigid Rules and Commercial Flexibility

In-depth discussions focus on the value trade-off in legal protection. While the absolute rule of "contract formed upon payment" protects consumers, it may impose asymmetric operational risks on operators in specific transaction scenarios such as limited-time flash sales and bulk customized transactions. Therefore, the view that completely denies any room for "otherwise agreed" is biased. The difficulty and frontier of current research lie in establishing a clearly operable review standard to strictly distinguish "genuine exceptions" based on reasonable risk management from "spurious agreements" intended to evade statutory obligations [6].

3 A Three-dimensional Compliance Review Model for "Otherwise Agreed" Clauses

Existing approaches lack a unified and operable standard to distinguish permissible exceptions from clauses that improperly undermine contract certainty, making a structured compliance model necessary. Based on literature research and research findings, this paper constructs a three-dimensional compliance review model for otherwise agreed-upon clauses in e-commerce. The model holds that any standard term that alters the statutory contract formation rules must pass three sequential reviews to be deemed valid.

3.1 Legal Precedence Review: Mandatory Rules and the Limits of Party Autonomy

Legal precedence review is the starting point and red line of the review, whose main function is to conduct legality screening. The review standard is direct and clear: whether the clause essentially results in the legal effect that the contract shall not be formed after the consumer pays the price. If the wording of the clause or its actual application sets the time of contract formation after the completion of payment, it violates the original intention of the mandatory protection bottom line established by Paragraph 2 of Article 49 of the E-commerce Law. Meanwhile, the consumer's payment behavior is the clearest expression of acceptance in online transactions; failing to confirm the formation of the contract fundamentally runs counter to the legislative purpose of protecting transaction reliance. Clauses that fail to pass this review shall be directly deemed invalid without entering subsequent evaluations.

3.2 Procedural Justice Review: Incorporation of Standard Terms and the Duty of Reasonable Notice

Clauses that pass the first-dimensional review mean that they do not directly negate the formation of the contract after payment. Therefore, it is necessary to examine whether the process of incorporating the clauses into the contract is fair, that is, whether the operator has fulfilled the duty of reasonable notice and explanation required by the Civil Code in the process. Four specific aspects are considered: first, prominence, whether the clause can attract the attention of most consumers with special identification; second, timeliness, whether the notice is given before key steps such as consumers submitting orders or completing payment, and confirmed in a non-skippable manner; third, clarity, whether the expression of the clause is clear and unambiguous; fourth, freedom of choice, whether consumers can continue to complete the transaction without accepting the clause. Clauses with major procedural flaws shall be deemed not incorporated into the contract [7,8].

3.3 Substantive Fairness Review: Evaluation of the Balance of Rights and Obligations

The purpose of substantive fairness review is to assess the fairness of the clause content. Its core task is to judge whether the additional conditions imposed by the clause on contract effectiveness or performance have legitimate commercial necessity, and at the same time, whether they excessively impair consumers' rights. The review follows a three-step approach: first, examining the legitimacy of the purpose, whether the risks claimed by the operator, such as preventing fraud and verifying the inventory of special goods, are real and reasonable; second, analyzing the necessity of the means, whether the measures adopted by the operator are necessary to achieve the legitimate purpose, and at the same time, whether they are the least restrictive means to consumers' rights and interests. For example, replacing the contract is formed upon shipment with the contract is formed upon payment, but the operator reserves the right to cancel the order and refund within 24 hours due to out-of-stock is a less restrictive alternative; third, weighing the balance of interests, whether the clause leads to a significant imbalance of rights and obligations between the two parties, and at the same time, whether it improperly excludes consumers' statutory core rights. Any clause that unilaterally grants operators the right to arbitrarily terminate the contract or excludes consumers' main rights shall not pass the substantive fairness review.

4 Implications of the Model for Adjudication, Platform Compliance, and Administrative Supervision

4.1 Judicial Adjudication

In the field of judicial adjudication, the model can assist judges in forming clear and logically rigorous judicial reasoning. When dealing with relevant disputes, judges can conduct sequential inspections: first, does the disputed clause result in the contract not being formed after payment? If not, proceed to the second dimension. Is the process of its incorporation into the contract fair? If yes, proceed to the third dimension. Is its content substantively fair? The structured analysis helps unify the judicial adjudication standards and enhance the persuasiveness of judgments. For example, in pricing error disputes, if the platform agreement contains a general clause such as we have the right to cancel orders due to information errors, the model analysis can find that if it leads to the arbitrary negation of the contract after payment, it may be deemed invalid in the first dimension, the contract is formed when the order is submitted, and the operator shall bear corresponding liability for breach of contract.

4.2 Platform Compliance

In the compliance construction of e-commerce platforms, the three-dimensional compliance review model can serve as a practical tool for agreement design and review. The legal department of the platform can conduct self-inspections based on this model, including: thoroughly cleaning up any expressions implying that the contract is not yet formed after payment; for special processes that really need to be set, they must be separately prompted in a prominent manner before users make payments; regularly evaluating existing special clauses based on the substantive fairness standard to ensure the rationality and equality of the operator's business logic [9,10].

4.3 Administrative Supervision and Industry Governance

At the level of administrative supervision and industry governance, regulatory authorities can transform the three-dimensional compliance review model into formatted and replicable evaluation tools. For example, through three-dimensional screening of platform agreements, high-risk clauses can be identified quickly and accurately, improving law enforcement efficiency. Industry associations can also take the lead in formulating model texts or compliance guidelines for contract formation clauses based on the three-dimensional compliance review model, clarifying the boundaries between permissible and impermissible behaviors, promoting the industry to move from passive compliance to active self-regulation, and forming a sound situation of coordinated governance [11,12].

5 Conclusion

The legislative spirit of the relevant clauses of the E-commerce Law of the People's Republic of China and the Civil Code lies in the contract formation rule based on the principle of successful order submission. The proviso in the Civil Code does not contradict the legislative spirit; instead, it opens up exceptional channels for a very small number of special businesses under extremely strict restrictions. By constructing the three-dimensional compliance review model, legal bottom lines, procedural justice and substantive fairness become the progressive basis of the review framework, providing a rigorous and practical scheme for identifying valid otherwise agreed clauses, reserving reasonable and standardized development space for commercial innovation, and guiding e-commerce towards a safer, fairer and more efficient future.

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