

Electronic contracts & the Indian law

This document is an extract from the book *Ecommerce - Legal Issues* authored by Rohas Nagpal. This book is available as courseware for the **Diploma in Cyber Law** and **PG Program in Cyber Law** conducted by Asian School of Cyber Laws



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4. Electronic Contracts

Contracts have become so common in daily life that most of the time we do not even realize that we have entered into one. Right from hiring a taxi to buying airline tickets online, innumerable things in our daily lives are governed by contracts.

The **Indian Contract Act, 1872** governs the manner in which contracts are made and executed in India. It governs the way in which the provisions in a contract are implemented and codifies the effect of a breach of contractual provisions.

Within the framework of the Act, parties are free to contract on any terms they choose. Indian Contract Act consists of limiting factors subject to which contract may be entered into, executed and breach enforced.

It only provides a framework of rules and regulations which govern formation and performance of contract. The rights and duties of parties and terms of agreement are decided by the contracting parties themselves. The court of law acts to enforce agreement, in case of non-performance.

Electronic contracts (contracts that are not paper based but rather in electronic form) are born out of the need for speed, convenience and efficiency.

Imagine a contract that an Indian exporter and an American importer wish to enter into. One option would be that one party first draws up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back. The other option is that the two parties meet somewhere and sign the contract.

In the electronic age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract. There is no need for delayed couriers and additional travelling costs in such a scenario.

There was initially an apprehension amongst the legislatures to recognize this modern technology, but now many countries have enacted laws to recognize electronic contracts.

The conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts. The Information Technology Act (IT Act) solves some of the peculiar issues that arise in the formation and authentication of electronic contracts.

4.1 Essentials of an electronic contract

As in every other contract, an electronic contract also requires the following necessary ingredients:

1. An offer needs to be made

In many transactions (whether online or conventional) the offer is not made directly one-on-one. The consumer 'browses' the available goods and services displayed on the merchant's website and then chooses what he would like to purchase.

The offer is not made by website displaying the items for sale at a particular price. This is actually **an invitation to offer** and hence is revocable at any time up to the time of acceptance. The offer is made by the customer on placing the products in the virtual 'basket' or 'shopping cart' for payment.

2. The offer needs to be accepted

As stated earlier, the acceptance is usually undertaken by the business after the offer has been made by the consumer in relation with the invitation to offer. An offer is revocable at any time until the acceptance is made.

Procedures available for forming electronic contracts include:

1. **E-mail:** Offers and acceptances can be exchanged entirely by e-mail, or can be combined with paper documents, faxes, telephonic discussions etc.
2. **Web Site Forms:** The seller can offer goods or services (e.g. air tickets, software etc) through his website. The customer places an order by completing and transmitting the order form provided on the website. The goods may be physically delivered later (e.g. in case of clothes, music CDs etc) or be immediately delivered electronically (e.g. e-tickets, software, mp3 etc).
3. **Online Agreements:** Users may need to accept an online agreement in order to be able to avail of the services e.g. clicking on "I accept" while installing software or clicking on "I agree" while signing up for an email account.

3. There has to be lawful consideration

Any contract to be enforceable by law must have lawful consideration, i.e., when both parties give and receive something in return. Therefore, if an auction site facilitates a contract between two parties where one





person provides a pornographic movie as consideration for purchasing an mp3 player, then such a contract is void.

4. There has to be an intention to create legal relations

If there is no intention on the part of the parties to create legal relationships, then no contract is possible between them. Usually, agreements of a domestic or social nature are not contracts and therefore are not enforceable, e.g., a website providing general health related information and tips.

5. The parties must be competent to contract

Contracts by minors, lunatics etc are void. All the parties to the contract must be legally competent to enter into the contract.

6. There must be free and genuine consent

Consent is said to be free when there is absence of coercion, misrepresentation, undue influence or fraud. In other words, there must not be any subversion of the will of any party to the contract to enter such contract.

Usually, in online contracts, especially when there is no active real-time interaction between the contracting parties, e.g., between a website and the customer who buys through such a site, the **click through procedure** ensures free and genuine consent.

7. The object of the contract must be lawful

A valid contract presupposes a lawful object. Thus a contract for selling narcotic drugs or pornography online is void.

8. There must be certainty and possibility of performance

A contract, to be enforceable, must not be vague or uncertain and there must be possibility of performance. A contract, which is impossible to perform, cannot be enforced, e.g., where a website promises to sell land on the moon.

4.2 Relevant IT Act provisions

Indian law provides for the authentication of electronic records by affixing a **digital signature**. The law provides for use of an **asymmetric crypto system** and **hash function** and also recommends standards to be adhered.

Chapter IV of the Information Technology Act, 2000 contains sections 11, 12 and 13 and is titled Attribution, Acknowledgment and Despatch of Electronic Records.

Attribution of Electronic Records

According to section 11 of the IT Act

11. *An electronic record shall be attributed to the originator—*

- (a) if it was sent by the originator himself;*
- (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or*
- (c) by an information system programmed by or on behalf of the originator to operate automatically.*

According to section 2(1)(za) of the IT Act, **originator** is a person who:

1. sends, generates, stores or transmits any electronic message or
2. causes any electronic message to be sent, generated, stored or transmitted to any other person.

The term originator **does not include an intermediary**.

Illustration

Pooja uses her gmail.com email account to send an email to Sameer. Pooja is the originator of the email.

Gmail.com is the intermediary.

This section can best be understood with the help of suitable illustrations.

Illustration 1

Pooja logs in to her web-based gmail.com email account. She composes an email and presses the "Send" button, thereby sending the email to Sameer. The electronic record (email in this case) will be attributed to Pooja (the originator in this case) as Pooja herself has sent it.





Illustration 2

Pooja instructs her assistant Siddharth to send the above-mentioned email. In this case also, the email will be attributed to Pooja (and not her assistant Siddharth). The email has been sent by a person (Siddharth) who had the authority to act on behalf of the originator (Pooja) of the electronic record (email).

Illustration 3

Pooja goes on vacation for a week. In the meanwhile, she does not want people to think that she is ignoring their emails. She configures her gmail.com account to automatically reply to all incoming email messages with the following message:

“Thanks for your email. I am on vacation for a week and will reply to your email as soon as I get back”.

Now every time that gmail.com replies to an incoming email on behalf of Pooja, the automatically generated email will be attributed to Pooja as it has been sent by an information system programmed on behalf of the originator (i.e. Pooja) to operate automatically.

Acknowledgment of Receipt

According to section 12(1) of the IT Act

Where the originator has not agreed with the addressee that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by—

- (a) any communication by the addressee, automated or otherwise; or*
- (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.*

According to section 2(1)(b) of the IT Act, **Addressee** means a person who is intended by the originator to receive the electronic record but does not include any intermediary.

Illustration

Pooja uses her gmail.com email account to send an email to Sameer. Pooja is the originator of the email. Gmail.com is the intermediary. Sameer is the addressee.

This sub-section provides for methods in which the acknowledgment of receipt of an electronic record may be given, provided no particular method has been agreed upon between the originator and the recipient.

One method for giving such acknowledgement is any communication (automated or otherwise) made by the addressee in this regard.



Illustration

Let us go back to the earlier example of Pooja going on vacation for a week. She has configured her email account to automatically reply to all incoming email messages with the following message

“Thanks for your email. I am on vacation for a week and will reply to your email as soon as I get back”.

The incoming message is also affixed at the bottom of the above-mentioned message.

Now when Siddharth sends an electronic record to Pooja by email, he will receive Pooja’s pre-set message as well as a copy of his own message.

This automated communication will serve as an acknowledgement that Pooja has received Siddharth’s message.

Another method is any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received. Let us take another illustration.

Illustration

Rohit sends an email to Pooja informing her that he would like to purchase a car from her and would like to know the prices of the cars available for sale. Pooja subsequently sends Rohit a catalogue of prices of the cars available for sale.

It can now be concluded that Pooja has received Rohit’s electronic record. This is because such a conduct on the part of Pooja (i.e. sending the catalogue) is sufficient to indicate to Rohit (the originator) that his email (i.e. the electronic record) has been received by the addressee (i.e. Pooja).



According to section 12(2) of the IT Act

Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

Illustration

Suppose Pooja wants to sell a car to Sameer. She sends him an offer to buy the car. In her email, Pooja asked Sameer to send her an acknowledgment that he has received her email. Sameer does not send her an acknowledgment. In such a situation it shall be assumed that the email sent by Pooja was never sent.

According to section 12(3) of the IT Act

Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

Illustration

Rohit sends the following email to Sameer:

Further to our discussion, I am ready to pay Rs 25 lakh for the source code for the PKI software developed by you. Let me know as soon as you receive this email.

Sameer does not acknowledge receipt of this email. Rohit sends him another email as follows:

I am resending you my earlier email in which I had offered to pay Rs 25 lakh for the source code for the PKI software developed by you. Please acknowledge receipt of my email latest by next week.

Sameer does not acknowledge the email even after a week. The initial email sent by Rohit will be treated to have never been sent.



Time and place of despatch and receipt

According to section 13(1) of the IT Act

Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

Illustration

Pooja composes a message for Rohit at 11.56 a.m. At exactly 12.00 noon she presses the “Submit” or “Send” button. When she does that the message leaves her computer and begins its journey across the Internet.

It is now no longer in Pooja’s control. The time of despatch of this message will be 12.00 noon.

According to section 13(2) of the IT Act

Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:—

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—

*(i) receipt occurs at the time when the electronic record enters the designated computer resource;
or*

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

Illustration:

The marketing department of a company claims that it would make the delivery of any order within 48 hours of receipt of the order. For this purpose they have created an order form on their website. The customer only has to fill in the form and



press submit and the message reaches the designated email address of the marketing department.

Now Suresh, a customer, fills in this order form and presses submit. The moment the message reaches the company's server, the order is deemed to have been received.

Karan, on the other hand, emails his order to the information division of the company. One Mr. Sharma, who is out on vacation, checks this account once a week. Mr. Sharma comes back two weeks later and logs in to the account at 11.30 a.m. This is the time of receipt of the message although it was sent two weeks earlier.

Now suppose the company had not specified any address to which orders can be sent by email. Had Karan then sent the order to the information division, the time of receipt of the message would have been the time when it reached the server of the company.

According to section 13(3) of the IT Act

Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

Illustration

Sameer is a businessman operating from his home in Pune, India. Sameer sent an order by email to a company having its head office in New York, USA.

The place of despatch of the order would be Sameer's home and the place of receipt of the order would be the company's office.

According to section 13(4) of the IT Act

The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

Illustration

Let us consider the illustration mentioned above of Sameer and the New York based company. Even if the company has its mail server located physically at Canada, the place of receipt of the order would be the company's office in New York USA.



According to section 13(5) of the IT Act

For the purposes of this section,—

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Illustration

Sameer sent an order by email to a company having its head office in New York, USA. The company has offices in 12 countries. The place of business will be the principal place of business (New York in this case).

Sameer is a businessman operating from his home in Pune, India. He does not have a separate place of business. Sameer's residence will be deemed to be the place of business.



A landmark judgement was given by the Allahabad High Court with respect to the formation of electronic contracts.

P.R. Transport Agency vs. Union of India & others

AIR2006All23, 2006(1)AWC504

IN THE HIGH COURT OF ALLAHABAD

Civil Misc. Writ Petition No. 58468 of 2005

Decided On: 24.09.2005

Appellants: P.R. Transport Agency through its partner Sri Prabhakar Singh Vs.

Respondent: Union of India (UOI) through Secretary, Ministry of Coal, Bharat Coking Coal Ltd. through its Chairman, Chief Sales Manager Road Sales, Bharat Coking Coal Ltd. and Metal and Scrap Trading Corporation Ltd. (MSTC Ltd.) through its Chairman cum Managing Director

Background of the case

Bharat Coking Coal Ltd (BCC) held an e-auction for coal in different lots. P.R. Transport Agency's (PRTA) bid was accepted for 4000 metric tons of coal from Dobari Colliery.

The acceptance letter was issued on 19th July 2005 by e-mail to PRTA's e-mail address. Acting upon this acceptance, PRTA deposited the full amount of Rs. 81.12 lakh through a cheque in favour of BCC. This cheque was accepted and encashed by BCC.

BCC did not deliver the coal to PRTA. Instead it e-mailed PRTA saying that the sale as well as the e-auction in favour of PRTA stood cancelled "due to some technical and unavoidable reasons".

The only reason for this cancellation was that there was some other person whose bid for the same coal was slightly higher than that of PRTA. Due to some flaw in the computer or its programme or feeding of data the higher bid had not been considered earlier.

This communication was challenged by PRTA in the High Court of Allahabad. [Note: Allahabad is in the state of Uttar Pradesh (UP)]

BCC objected to the "territorial jurisdiction" of the Court on the grounds that no part of the cause of action had arisen within U.P.

Issue raised by BCC

The High Court at Allahabad (in U.P.) had no jurisdiction as no part of the cause of action had arisen within U.P.

Issues raised by PRTA

1. The communication of the acceptance of the tender was received by the petitioner by e-mail at Chandauli (U.P.). Hence, the contract (from which the dispute arose) was completed at Chandauli (U.P). The completion of the contract is a part of the “cause of action”.
2. The place where the contract was completed by receipt of communication of acceptance is a place where 'part of cause of action' arises.

Points considered by the court

1. With reference to contracts made by telephone, telex or fax, the contract is complete when and where the acceptance is received. However, this principle can apply only where the transmitting terminal and the receiving terminal are at fixed points.
2. In case of e-mail, the data (in this case acceptance) can be transmitted from anywhere by the e-mail account holder. It goes to the memory of a 'server' which may be located anywhere and can be retrieved by the addressee account holder from anywhere in the world. Therefore, there is no fixed point either of transmission or of receipt.
3. Section 13(3) of the Information Technology Act has covered this difficulty of “no fixed point either of transmission or of receipt”. According to this section “...an electronic record is deemed to be received at the place where the addressee has his place of business.”
4. The acceptance of the tender will be deemed to be received by PRTA at the places where it has place of business. In this case it is Varanasi and Chandauli (both in U.P.)

Decision of the court

1. The acceptance was received by PRTA at Chandauli / Varanasi. The contract became complete by receipt of such acceptance.
2. Both these places were within the territorial jurisdiction of the High Court of Allahabad. Therefore, a part of the cause of action had arisen in U.P. and the court had territorial jurisdiction.





4.3 Shrink wrap and click wrap contracts

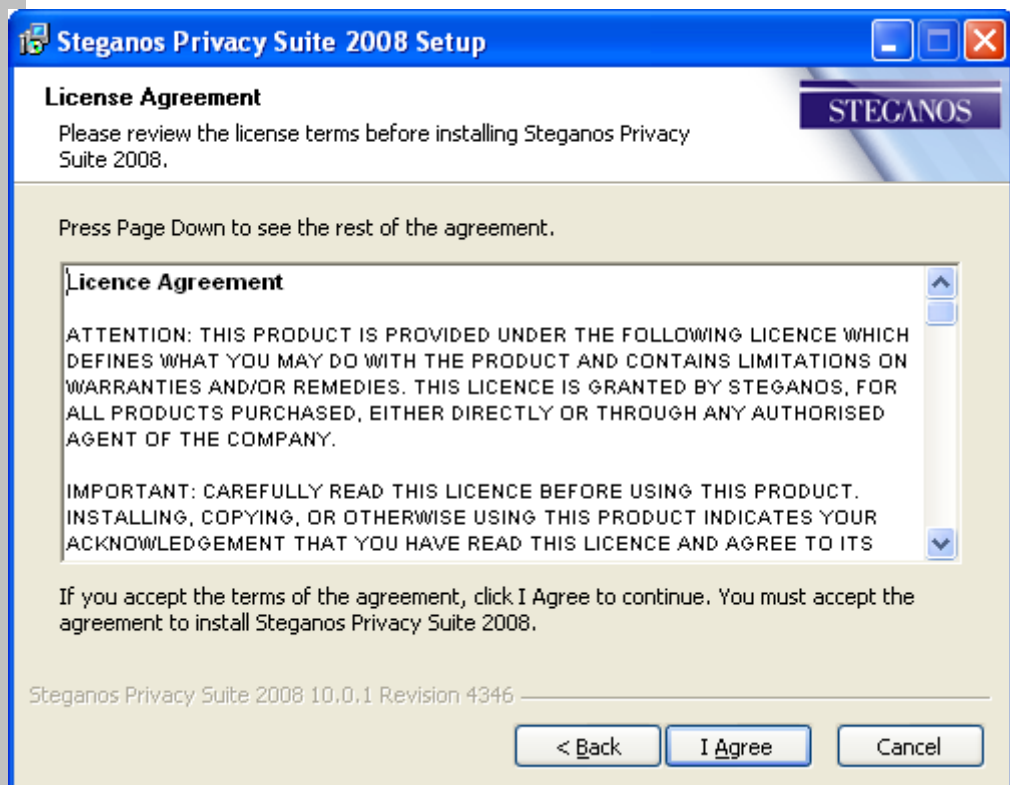
Shrink wrap and click wrap are common types of agreements used in electronic commerce.

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product. The term describes the shrink wrap plastic wrapping used to coat software boxes, though these contracts are not limited to the software industry.

A **clickwrap agreement** is mostly found as part of the installation process of software packages. It is also called a "click through" agreement or clickwrap license. The name "clickwrap" comes from the use of "shrink wrap contracts" in boxed software purchases.

Click-wrap agreements can be of the following types:

1. **Type and Click** where the user must type "I accept" or other specified words in an on-screen box and then click a "Submit" or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.
2. **Icon Clicking** where the user must click on an "OK" or "I agree" button on a dialog box or pop-up window. A user indicates rejection by clicking "Cancel" or closing the window. [See illustration below]



Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a “**take-it-or-leave-it**” type of contract that lacks bargaining power.

The terms of service or license may not always appear on the same webpage or window, but they must always be accessible before acceptance.

Sample click wrap contract

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4.4 Contract 1 – Email service agreement

Suppose Noodle Ltd wants to offer email services to its customers. It would need to enter into a contract with all its potential customers “before” they create a new email account with it. This contract must serve the following purposes:

1. Outline the **scope of services** provided by Noodle Ltd.
2. **Restrict Noodle’s liabilities** in case there is any defect in the Noodle email services.
3. Outline the **duties and obligations of the customer**.
4. **Obtain suitable licence** from the customer in respect of his content.
5. **Grant suitable licence** to the customer to use the Noodle email services software.
6. Restrict Noodle’s liabilities in case of **loss or damage suffered by the customer** as a direct or indirect result of the Noodle email services.
7. Restrict Noodle’s liabilities for **acts of advertisers** who use the Noodle email services to promote their goods and services.

1. Customer’s relationship with Noodle

The contract should specify that by using Noodle email services, the customer becomes subject to the terms of a legal agreement between the customer and Noodle. Customers must be informed that they must be of **legal age** to enter into the contract.

2. Acceptance of the terms of the contract

The contract should clearly lay down that a customer cannot use the Noodle email services unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an “I Accept” link or checking an “**I Accept**” checkbox.

3. Provision of the services

Considering the nature of email services and the technological aspects the customer must be clearly informed and warned that:

1. The nature of the services may **change** without prior notice.
2. Noodle may **stop providing the services** to all or selected customers at any time without prior notice,

3. Noodle can **disable any customer's account**. When that happens the customer will be unable to access his stored emails or receive and send new emails.
4. Noodle can **impose limitations** on the numbers of emails that a customer can send, size and content of attachments etc.

4. Duties and obligations of customer

The contract should clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

1. provide accurate and updated **personal information**,
2. use the services only for **allowed purposes**,
3. not use the Noodle email services for **prohibited purposes** such as transmitting pornography, pirated content, defamatory and seditious content etc.
4. access (or attempt to access) the services only through the **interface** provided by Noodle,
5. not access (or attempt to access) the services through any automated means not permitted by Noodle,
6. comply with the instructions contained in the **robots.txt file** on the Noodle web servers,
7. not engage (directly or indirectly) in any activity that interferes with or **disrupts** the services,
8. not **reproduce**, duplicate, copy, sell, trade or resell the services for any purpose,
9. maintain the **confidentiality of passwords** used to access the services,
10. intimate Noodle of any **unauthorized use** of password,
11. be **solely responsible** for any content created, transmitted or displayed by the customer while using the services,
12. download and obtain content through the Noodle email services at his own discretion and risk.

5. Content licence from the customer

The user retains **copyright** and other rights over the content submitted, stored, posted or displayed by him through the Noodle email services.





The user must be clearly informed that by transmitting, storing, submitting or posting the said content, he gives Noodle a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive **licence** to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute the content.

6. License from Noodle

The contract should specify that Noodle is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive **licence** to use the software provided as part of the Noodle email services.

The contract must clarify that this licence is for the sole purpose of enabling the customer to use the Noodle email services. The contract must forbid the customer from the following acts in respect of the said software:

1. copying,
2. modifying,
3. creating a derivative work of,
4. reverse engineering,
5. decompiling or otherwise attempting to extract the source code.

The contract should mention that the customer cannot assign, sub-licence or transfer his rights to use the Noodle email service software.

7. Prohibitions

The contract should specifically prohibit the following:

1. Using "deep-link", "page-scrape", "robot", "spider" etc to access, acquire, copy or monitor any portion of the service.
2. Reproducing the navigational structure or presentation of the service.
3. Circumventing the navigational structure or presentation of the service.
4. Attempting to gain unauthorized access to any portion or feature of the service.
5. Harvesting or collecting user names, email addresses or other member identification information.
6. Probing, scanning or testing the vulnerability of the service.
7. Tracing information relating to other users.



8. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.
9. Using the service for any unlawful purpose.
10. Forging email headers.
11. Manipulating identifiers in order to disguise the origin of any email.

8. Exclusion of warranties

The contract should clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "**as is**" and "as available". The contract must expressly **disclaim all warranties** and conditions of any kind (express and implied).

It must also be mentioned clearly that Noodle (its subsidiaries, affiliates, licensors etc) do not represent that:

1. the Noodle email services will meet the customer's requirements,
2. the Noodle email services will be uninterrupted, timely, secure or free from error,
3. the information provided by or through the Noodle email services will be accurate or reliable, and
4. that defects in the operation or functionality of the Noodle email services will be corrected.

9. Limitation of liability

The contract must clearly mention that Noodle Ltd (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

1. Any direct, indirect, incidental, special consequential or exemplary **damages** incurred by the customer pursuant of his use of the Noodle email services.
2. Any **loss** of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant to his use of the Noodle email services.
3. Any loss or **damage** incurred by the customer as a result of relationship or transactions with advertisers using the Noodle email services.



4. Changes in or **cessation** of the Noodle email services.
5. **Deletion** or corruption of content transmitted through or stored in Noodle email services.
6. Customer's failure to keep his account information, passwords etc secure and **confidential**.

10. Ending the relationship between Noodle and the customer

The contract must lay down the customer can terminate the contract by closing his accounts with the Noodle email service. Noodle must retain the right to terminate the contract under the following circumstances:

1. The customer breaches any provision of the contract.
2. The customer acts in a manner that clearly shows his intention to breach a provision of the contract.
3. Noodle is required by law to terminate the contract.
4. The provision of the services to the customer is no longer commercially viable.

4.5 Contract 2 – Domain purchase agreement

Suppose Noodle Ltd wants to offer domain name registration services to its customers. Additionally it would allow customers to host their domain's domain name servers (DNS) on Noodle's servers. Noodle will also allow customers to use its systems to forward a domain to a system or site hosted elsewhere.

It would need to enter into a contract with all its potential customers "before" they register a domain name using Noodle services. This contract must serve the following purposes:

1. Outline the **scope of services** provided by Noodle Ltd.
2. **Restrict Noodle's liabilities** in case there is any defect in the Noodle domain name registration services.
3. Allow the **publication and sale of certain information** about the customer and the domain name.
4. Outline the **duties and obligations of the customer**.
5. **Grant suitable licence** to the customer to use the Noodle domain name registration software.
6. Restrict Noodle's liabilities in case of **loss or damage suffered by the customer** as a direct or indirect result of the Noodle domain name registration services.

1. Customer's relationship with Noodle

The contract must specify that by using Noodle domain name registration services, the customer becomes subject to the terms of a legal agreement between the customer and Noodle. Customers must be informed that they must be of **legal age** to enter into the contract.

2. Acceptance of the terms of the contract

The contract must clearly lay down that a customer cannot use the Noodle domain name registration services unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an "I Accept" link or checking an "**I Accept**" checkbox.

3. Selection of a domain name

Noodle cannot check whether the domain name selected by the customer infringes legal rights of any third party. The contract should specify that the onus is on the customer to investigate to see whether the domain name selected by him infringes legal rights of others.

Noodle may advise the customers to register trademarks in connection with the selected domain names. The contract should inform the customer that Noodle may be **ordered by a court** to cancel, modify, or





transfer the customer's domain name. The customer must also be informed that he must indemnify Noodle in case of any law suit in connection with the domain name.

4. Fees and basic information

The contract should clearly lay down that the customer is liable to pay the relevant fees to Noodle in return for the domain name registration.

The contract should also specify that the customer is required to provide **current, complete and accurate personal information** as required by the registration process. The customer is also required to inform Noodle about any changes in this information.

The contract should specify that for each domain name registered by a customer, the following information will be made publicly available in the "Whois directory" as determined by the **Internet Corporation for Assigned Names and Numbers (ICANN) Policy** and may be sold in bulk as set forth in the ICANN agreement:

1. The domain name
2. The registrant's name and postal address
3. The email address, postal address, voice and fax numbers for technical and administrative contacts
4. The Internet protocol numbers for the primary and secondary name servers
5. The corresponding names of the name servers
6. The original date of registration and expiration date

5. Dispute resolution policy

The contract should clearly state that the customer is bound by the terms of the ICANN Uniform Domain Name Dispute Resolution Policy. The customer must also indemnify Noodle from any liabilities in case of a domain name dispute.

6. Domain Name Renewals

Noodle may offer customers the option of their domain names being automatically renewed upon the expiration date. In case automatic renewal is the default setting, then customers must be warned to deactivate it if they do not want the domain name to be automatically renewed. The exact terms of the auto renewal (such as term and fees) must be mentioned in the contract.

In case a customer fails to renew a domain name, then the following procedure is usually followed.

1. Noodle may, at its sole discretion, renew the expired domain name on the customer's behalf.
2. Noodle may then provide a 15 day "renewal grace period" during which the customer could pay a nominal extra charge to Noodle and then renew the domain.
3. On expiry of the "renewal grace period" the domain name will be placed on "Hold" and flagged for deletion for a 30 day redemption period. During this period the customer could get back his domain on payment of heavy fees.
4. On expiry of the redemption period, Noodle could delete the domain name or transfer it to another registrant. On deletion, the domain name could be registered by anyone else.



7. Transfer and resale of domain names

The contract should provide for the following clauses:

1. Procedure to be followed in case the customer transfers a domain name to someone else.
2. Procedure to be followed by resellers who are using Noodle services to register domains for third parties.

8. Customers duties and obligations

The contract should clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

1. Not **overload** Noodle's DNS systems.
2. Not use **Noodle's servers** as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, or other abusive **attacks**.
3. Not use his **own domain** as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, or other abusive **attacks**.

9. Prohibitions

The contract should specifically prohibit the following:

1. Using "deep-link", "page-scrape", "robot", "spider" etc to access, acquire, copy or monitor any portion of the service.
2. Reproducing the navigational structure or presentation of the service.
3. Circumventing the navigational structure or presentation of the service.



4. Attempting to gain unauthorized access to any portion or feature of the service.
5. Harvesting or collecting user names, email addresses or other member identification information.
6. Probing, scanning or testing the vulnerability of the service.
7. Tracing information relating to other users.
8. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.
9. Using the service for any unlawful purpose.

10. License from Noodle

The contract should specify that Noodle is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive **licence** to use the software provided as part of the Noodle domain name registration services.

The contract must clarify that this licence is for the sole purpose of enabling the customer to use the Noodle domain name registration services. The contract must forbid the customer from the following acts in respect of the said software:

1. copying,
2. modifying,
3. creating a derivative work of,
4. reverse engineering,
5. decompiling or otherwise attempting to extract the source code.

The contract must mention that the customer cannot assign, sub-licence or transfer his rights to use the Noodle domain registration software.

11. Limitation of liability

The contract should clearly mention that Noodle Ltd (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

1. Access delays or interruptions to the Noodle web site or domain name registration system.
2. The loss of registration or processing of a domain name.



3. The failure for whatever reason to renew a domain name registration.
4. The unauthorized use of the customer's account with Noodle.
5. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to Noodle staff.
6. Errors taking place with regard to the processing of the customer's application.
7. Any direct, indirect, incidental, special consequential or exemplary **damages** incurred by the customer pursuant to his use of the Noodle domain name registration services.
8. Any **loss** of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the Noodle domain name registration services.
9. Any loss or **damage** incurred by the customer as a result of relationship or transactions with advertisers using the Noodle domain name registration services.
10. Changes in or **cessation** of the Noodle domain name registration services.
11. Customer's failure to keep his account information, passwords etc secure and **confidential**.

12. Exclusion of warranties

The contract should clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "**as is**" and "as available". The contract must expressly **disclaim all warranties** and conditions of any kind (express and implied).

It must also be mentioned clearly that Noodle (its subsidiaries, affiliates, licensors etc) do not represent or warrant to that:

1. the Noodle services will meet the customer's requirements,
2. the Noodle services will be uninterrupted, timely, secure or free from error,
3. the information provided by or through the Noodle services will be accurate or reliable, and
4. that defects in the operation or functionality of the Noodle services will be corrected.



13. Ending the relationship between Noodle and the customer

The contract must lay down the customer can terminate the contract by closing his accounts with the Noodle domain name registration service. Noodle must retain the right to terminate the contract under the following circumstances:

1. The customer breaches any provision of the contract.
2. The customer acts in a manner that clearly shows his intention to breach a provision of the contract.
3. Noodle is required by law to terminate the contract.
4. The provision of the services to the customer is no longer commercially viable.

4.6 Contract 3 – Online share trading agreement

Noodle Ltd is setting up a website for facilitating online share trading. The services to be provided by the website include:

1. providing information on various investment opportunities
2. enabling customers to buy and sell securities (including shares, options, futures, mutual fund units etc) online

It would need to enter into a contract with all its potential customers “before” they register an online share trading account. This contract must serve the following purposes:

1. Customer’s relationship with Noodle

The contract must specify that by using the Noodle website, the customer becomes subject to the terms of a legal agreement between the customer and Noodle. Customers must be informed that they must be of **legal age** to enter into the contract.

2. Acceptance of the terms of the contract

The contract must clearly lay down that a customer cannot use the Noodle website unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an “I Accept” link or checking an “**I Accept**” checkbox.

3. Copyright

The contract must clearly state that all content included on the Noodle website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Noodle Ltd.

4. Customers duties and obligations

The contract must clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

1. Not **overload** Noodle’s systems.
2. Not download or modify the Noodle website.
3. Collect and use any investment and securities listings or descriptions.
4. Download or copy account information by data gathering and extraction tools.
5. Not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form).





6. Not use any meta tags or any other "hidden text" utilizing Noodle's name or trademarks.

5. Prohibitions

The contract must specifically prohibit the following:

1. Using "deep-link", "page-scrape", "robot", "spider" etc to access, acquire, copy or monitor any portion of the service.
2. Reproducing the navigational structure or presentation of the service.
3. Circumventing the navigational structure or presentation of the service.
4. Attempting to gain unauthorized access to any portion or feature of the service.
5. Harvesting or collecting user names, email addresses or other member identification information.
6. Probing, scanning or testing the vulnerability of the service.
7. Tracing information relating to other users.
8. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.
9. Using the service for any unlawful purpose.

6. Applicable Law

The contract should mention the city / state and country whose law will prevail in this contract. The courts having exclusive jurisdiction over the disputes should also be mentioned. Conditions relating to arbitration of disputes may also be mentioned.

7. Specific disclaimers

The contract must clearly mention the following:

1. Noodle reserves the absolute right and discretion to decide on the criteria for selecting the customers to participate in this service.
2. The service is subject to the requisite permissions, approvals, licenses and any other clearance from the appropriate regulatory authorities including Securities and Exchange Board of India (SEBI) and the relevant stock exchanges.



3. Even though the website can be accessed from anywhere in the world, the services are only provided in areas where it is lawful to do so.
4. The service is not intended to be any form of an investment advertisement, investment advice or investment information.
5. The service has not been registered under any securities law of any foreign country.
6. The information, analysis, research reports, etc. on the website are provided "**as is**" and "as available" and Noodle is not liable for any errors or omissions in the same.
7. Noodle and its employees may invest in some or all of the securities discussed or recommended in the market analysis, research reports, etc.
8. The content of the articles and the interpretation of data are solely the personal views of the contributors. These do not reflect the views of Noodle.
9. Customers are advised to peruse the articles and other data only as preliminary unverified information. They must rely on their own judgment, logic and reasoning when making investment decisions.

8. Limitation of liability

The contract must clearly mention that Noodle Ltd (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

1. Access delays or interruptions to the Noodle web site.
2. The loss of registration or processing of an order.
3. The unauthorized use of the customer's account with Noodle.
4. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to Noodle staff.
5. Errors taking place with regard to the processing of the customer's orders.
6. Any direct, indirect, incidental, special consequential or exemplary **damages** incurred by the customer pursuant of his use of the Noodle website.
7. Any **loss** of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or



- services, or other intangible loss incurred by the customer pursuant of his use of the Noodle services.
8. Any loss or **damage** incurred by the customer as a result of relationship or transactions with advertisers using the Noodle website.
 9. Changes in or **cessation** of the Noodle services.
 10. Customer's failure to keep his account information, passwords etc secure and **confidential**.
 11. Misrepresentation, falsification, deception or for any lack of availability of services through the website.

9. Exclusion of warranties

The contract must clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "**as is**" and "as available". The contract must expressly **disclaim all warranties** and conditions of any kind (express and implied).

It must also be mentioned clearly that Noodle (its subsidiaries, affiliates, licensors etc) do not represent or warrant to that:

5. the Noodle services will meet the customer's requirements,
6. the Noodle services will be uninterrupted, timely, secure or free from error,
7. the information provided by or through the Noodle services will be accurate or reliable, and
8. that defects in the operation or functionality of the Noodle services will be corrected.

4.7 Contract 4 – Online shopping agreement

Suppose Noodle Ltd wants to offer online shopping services to its customers. Noodle would tie-up with manufacturers of books, toys, clothes etc and offer their products for sale through its website. Some of the products could be stocked in Noodle's warehouses while others could be stocked with the manufacturers.

Additionally visitors can post reviews, comments, photos etc on the Noodle website. Noodle would need to enter into a contract with all its potential customers "before" they place an order for a product using Noodle services. This contract must serve the following purposes:

1. Outline the **scope of services** provided by Noodle Ltd.
2. **Restrict Noodle's liabilities** in case there is any defect in the products sold through the Noodle website.
3. Outline the **duties and obligations of the customer**.
4. **Grant suitable licence** to the customer to use the Noodle website.
5. Restrict Noodle's liabilities in case of **loss or damage suffered by the customer** as a direct or indirect result of the Noodle website.

1. Customer's relationship with Noodle

The contract must specify that by using the Noodle website, the customer becomes subject to the terms of a legal agreement between the customer and Noodle. Customers must be informed that they must be of **legal age** to enter into the contract.

2. Acceptance of the terms of the contract

The contract must clearly lay down that a customer cannot use the Noodle website unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an "I Accept" link or checking an "**I Accept**" checkbox.

3. Copyright

The contract should clearly that all content included on the Noodle website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Noodle Ltd.

4. Customers duties and obligations

The contract should clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

1. Not **overload** Noodle's systems.





2. Not download or modify the Noodle website.
3. Collect and use any product listings, descriptions, or prices.
4. Download or copy account information by data gathering and extraction tools.
5. Not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form).
6. Not use any meta tags or any other "hidden text" utilizing Noodle's name or trademarks.

5. License from Noodle

The contract should specify that Noodle is giving the customer a limited, revocable, and nonexclusive right to create a hyperlink to the home page of Noodle so long as the link does not portray Noodle, or its products or services in a false, misleading, derogatory, or otherwise offensive matter.

The contract must also specify that Noodle is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive **licence** to use the software provided as part of the Noodle website.

The contract must clarify that this licence is for the sole purpose of enabling the customer to use the Noodle website. The contract must forbid the customer from the following acts in respect of the said software:

1. copying,
2. modifying,
3. creating a derivative work of,
4. reverse engineering,
5. decompiling or otherwise attempting to extract the source code.

The contract must mention that the customer cannot assign, sub-licence or transfer his rights to use the Noodle software.

6. Reviews and comments

The contract should clearly mention that the reviews, comments, photos etc posted by customers should not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties.

It should also be mentioned that such content should not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam."

It should also be stated that a customer who posts content grants to Noodle Ltd nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media.

The contract must also state that the customer posting the content indemnifies Noodle against all legal action and claims resulting from the said content

7. Risk of loss

Noodle has a shipping contract with various courier companies to deliver the products to the customers. The contract should clearly state that once the products are handed over to the courier company, Noodle's liability ends.

8. Pricing

The contract should clarify how the prices listed on the Noodle website are computed. The various options could be:

1. The listed price represents the full retail price listed on the product itself,
2. The listed price is suggested by the manufacturer or supplier,
3. The listed price is estimated in accordance with standard industry practice, or
4. The listed price is estimated in accordance with the estimated retail value for a comparably featured item offered elsewhere.

9. Prohibitions

The contract must specifically prohibit the following:

1. Using "deep-link", "page-scrape", "robot", "spider" etc to access, acquire, copy or monitor any portion of the service.
2. Reproducing the navigational structure or presentation of the service.
3. Circumventing the navigational structure or presentation of the service.
4. Attempting to gain unauthorized access to any portion or feature of the service.
5. Harvesting or collecting user names, email addresses or other member identification information.
6. Probing, scanning or testing the vulnerability of the service.





7. Tracing information relating to other users.
8. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.
9. Using the service for any unlawful purpose.

10. Applicable Law

The contract should mention the city / state and country whose law will prevail in this contract. The courts having exclusive jurisdiction over the disputes should also be mentioned. Conditions relating to arbitration of disputes may also be mentioned.

11. Limitation of liability

The contract must clearly mention that Noodle Ltd (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

1. Access delays or interruptions to the Noodle web site.
2. The loss of registration or processing of an order.
3. The unauthorized use of the customer's account with Noodle.
4. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to Noodle staff.
5. Errors taking place with regard to the processing of the customer's orders.
6. Any direct, indirect, incidental, special consequential or exemplary **damages** incurred by the customer pursuant of his use of the Noodle website.
7. Any **loss** of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the Noodle services.
8. Any loss or **damage** incurred by the customer as a result of relationship or transactions with advertisers using the Noodle website.
9. Changes in or **cessation** of the Noodle services.
10. Customer's failure to keep his account information, passwords etc secure and **confidential**.

12. Exclusion of warranties

The contract must clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "**as is**" and "as available". The contract must expressly **disclaim all warranties** and conditions of any kind (express and implied).

It must also be mentioned clearly that Noodle (its subsidiaries, affiliates, licensors etc) do not represent or warrant to that:

1. the Noodle services will meet the customer's requirements,
2. the Noodle services will be uninterrupted, timely, secure or free from error,
3. the information provided by or through the Noodle services will be accurate or reliable, and
4. that defects in the operation or functionality of the Noodle services will be corrected.

13. Ending the relationship between Noodle and the customer

The contract must lay down that the customer can terminate the contract by closing his accounts with Noodle. Noodle must retain the right to terminate the contract under the following circumstances:

1. The customer breaches any provision of the contract.
2. The customer acts in a manner that clearly shows his intention to breach a provision of the contract.
3. Noodle is required by law to terminate the contract.
4. The provision of the services to the customer is no longer commercially viable.





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