

# A Study on the Legal Issues concerning Standard Contracts of E-commerce Platforms

**Qianyun Deng**

School of Law, Yunnan University, Kunming, 650000, China  
dqy13649630869@163.com

**Abstract:** *The first part of this paper summarizes the characteristics of e-commerce platform format contract: stereotypes, that is, stability and invariance. At the same time, it is concluded that the e-commerce platform format contract differs from the characteristics of ordinary format contract: the signatory's behavior ability is difficult to distinguish and the obligation to remind is weakened. This paper summarizes the e-commerce platform and the extension of its format contract, and gives its remarkable characteristics. The second part, by analyzing the format contracts of the major e-commerce platforms, summarizes the format terms of several e-commerce platform service agreements or registration agreements: (1) the terms of the jurisdictional agreement. (2) The network service platform may modify, suspend or stop the service strip unilaterally at any time. (3) User data and usage habits, preferences collection terms. (4) The format terms of the offer, invitation and commitment. (5) The format clause of the order of the dispute resolution procedures. The third part puts forward the problem that the logical rules and validity evaluation rules that judge the validity of the format clause in the macro-existence in judicial practice are not clear, while there are cases in the microcosm where the contract clauses of individual typical formats may be substantially invalid, and the problems arising from the macro and micro are analyzed. Finally, in the face of these macro and micro problems, the paper gives solutions: first, the establishment and entry into force of the contract should be judged separately; And according to the resulting method, the effect of the micro-problematic format clause summarized above is evaluated one by one.*

**Keywords:** *e-commerce platform, format contract, format terms, validity judgment*

## 1. Introduction

In recent years, E-commerce platforms have become an online shopping channel for everyone in daily lives. In order to safeguard normal operation, reduce disputes and judicial risks arising from transactions, improve transaction efficiency, and better deal with potential legal disputes, E-commerce platforms have formulated a series of standard contracts like Agreement on User Registration to regulate the rights and obligations between the E-commerce platforms and users. In terms of reality, however, it's been gradually a social focus as to whether the standard contracts formulated by E-commerce platforms can achieve equality of rights and obligations between users and operators. What's more, as to the validity of such standard contracts, there are increasing circumstances of the same cause with different effect and the same case with different judgment. Therefore, it's a pending problem of how to safeguard the legal rights and interests of all participants in transactions on E-commerce platforms, especially the rights and interests of registered users of E-commerce platforms, and how to regulate the operation and services of online platforms, especially the key behavior of conclusion of user service agreement.

## 2. The Definition and Characteristics of Standard Contracts of E-commerce Platforms

E-commerce refers to the business activities of selling goods or providing services through information networks such as the Internet. <sup>[1]</sup>The standard contracts of E-commerce referred to in this paper refers to the standard contracts which are drawn up by network operators and service providers and provided to the non-specific network service consumers.

The standard contracts of E-commerce platforms share the characteristics of general standard contracts. First, they are formulated by one party in advance, that is, by the network operator or service provider. Second, they are conventionalized, which means stability and invariance. In other words, their

content is considerable stable and will not change with different counterparties. Finally, they are non-negotiable, and the counterparties can either reject or accept the standard contracts provided by the network operators or service providers without the right to modify or change their content.<sup>[2]</sup>

Second, standard contracts of E-commerce platforms also differ from general standard contracts. Since standard contracts of E-commerce platforms are concluded based on network platforms, it is impossible to identify the specific situation of counterparties. The *Civil Code of the People's Republic of China* stipulates that minors under the age of eight have no capacity for performing civil juristic acts; and that minors aged 8 or above and adults unable to comprehend their own conducts have limited capacity for performing civil juristic acts; and that they may perform a civil juristic act through or upon consent or ratification of his legal representative. Therefore, there are limitations on the age for performing civil juristic acts, as well as on the ability to comprehend the conducts. However, as standard contracts of E-commerce platforms can be concluded only through network and it is impossible to judge whether a user has the ability to independently perform civil juristic acts in view of large number of users every day, a major feature of standard contracts of E-commerce platforms is the difficulty to identify the signers' ability to perform the acts.

At the same time, another unique feature of standard contracts of E-commerce platforms is that the obligation to inform and remind signers is weakened. Since most of these companies engage in the same repeated transactions, in order to improve transaction efficiency and allocate transaction risks, the counterparties to contracts are, as often as not, compelled to express their reasons and intent of signing the contracts by clicking the button of "Agree". Furthermore, these contracts of E-commerce platforms are usually displayed on the page of user registration or transaction in form of hyperlink, which means a user who accepts the contract may sign it without reading. In most cases, network service consumers do not read standard clauses with legal terminology and can hardly understand the meaning even after reading. Therefore, they cannot timely receive detailed interpretation from contract providers to understand the true intent of the other party.

### **3. The Types of Typical Standard Clauses of E-commerce Platforms**

#### ***3.1 Clauses for settlement of disputes***

##### ***3.1.1 Clauses for agreement on jurisdiction***

Network operators and service providers usually stipulate the rules of jurisdiction for contractual disputes between the two parties in the form of standard clauses. Since the network environment is extremely virtual and cross-regional, the determination of settlement rules and the jurisdictional court before occurrence of any disputes is a necessary measure adopted by E-commerce platforms to improve transaction efficiency. Most standard clauses in typical agreement on jurisdiction is as follows: If there are any contractual disputes between the two parties, the court of the defendant's domicile or the competent court designated by the party preparing the standard clauses shall have the jurisdiction.

##### ***3.1.2 Clauses for the order of dispute settlement procedures***

The clauses for the order of settlement procedures refer to the provisions made by E-commerce platforms in advance on the order in which of disputes will be settled. Some e-commerce platforms will exclude settlement of disputes through litigation in the standard clauses, stipulating that users must first carry out negotiations or undergo the dispute settlement procedures stipulated by the platforms in case of any contractual disputes and may file a lawsuit only after failure of negotiations. Some E-commerce platforms even stipulated that the contractual disputes may only be settled through arbitration at the place designated by E-commerce platforms.

#### ***3.2 Clauses for unilateral revision, suspension and termination of services by E-commerce platforms from time to time***

Such standard clauses generally mean that an E-commerce platform can modify all or part of the terms of the agreement for whatever reason from time to time. If a user does not agree on the right of the E-commerce platform to modify the service agreement, then the platform will suspend provision of network services for the user; if the user continues to use the platform, then the user agrees the right of the E-commerce platform to modify the agreement by default, and the agreement is reached on the modified service agreement, as a result of which the new standard contract shall regulate the rights and obligations of the two parties.

### **3.3 Clauses for collection of users' data, use habits and preferences**

Today, with popularization and maturity of user data collection and analysis technologies, E-commerce platforms calculate users' personal preferences and potential needs based on user data and portraits, and push users' interested content to attract more users and improve user stickiness. According to the privacy policies of E-commerce platforms such as Taobao, Jingdong and Pingduoduo, the collected information include the following: browsing and search records, shopping cart information, and location information (for recommendation of nearby businesses and hotels). At the same time, the privacy policies of these platforms also stipulate that if a user wants to use additional services of the platform, they authorize the right to access camera/camera albums (picture library/video library), microphone voice, address book, friend interaction, calendar, steps data, storage and phone calls. Users are also informed how to disable access to such information in their phone if they refuse to provide it.

### **3.4 Standard format clauses for offers, invitation to offers and undertakings**

The *User Registration Agreement of Jingdong*<sup>[3]</sup> stipulates: the parameters such as the quantity and price of goods as displayed by sellers on the pages of the website are only an invitation to offers, and the price displayed on the pages, quantity, payment account, consignee, contact information, and address (considered as the place where the contract is performed) etc. filled in by a user when placing an order will be automatically processed into an order by the system. This order shall be considered as the user's offer to the seller on the platform; the seller will deliver the commodity after receiving the user's order, after which a contractual relationship is established between the user and the seller. Furthermore, only the commodity delivered by the seller is involved in such relationship. If a user places an order for multiple commodities, a single seller will only deliver part of commodities, in which case a contractual relationship is established between the user and the seller for only the commodities actually received by the user. As to the undelivered commodities, contractual relationship is established only when they are actually delivered. With regard to digital commodities such as digital books, copyrighted music, and mobile phone top-up, the contract is established immediately after an order is placed and payment is made. When you place an order and makes the payment as a consumer for the needs of living, a contractual relationship is established between you and the seller concerning the paid order immediately after you've made the payment.

## **4. Problems with Standard Clauses of E-commerce Platforms in Judicial Practice**

### **4.1 Macro level: Ambiguous logic rules and validity evaluation rules concerning judgment of effectiveness of standard clauses**

#### **4.1.1. Logic problems with judgment of establishment and validity of standard clauses**

When determining the validity of standard clauses of E-commerce platforms, courts often mix formal regulation and validity regulation methods rigidly and indiscriminately, without correct comprehension of incorporation rules in Article 40 of the Contract Law (Article 496 of the Civil Code) and the boundary and application order of formal regulation and validity regulation rules: in most cases, a standard clause is invalid if the obligation of calling attention is required but not performed. Although invalidity is the natural result of the non-establishment of contract, such an approach will lead to a wrong understanding after natural interpretation: if the formulating party fails to perform the obligation of calling attention, the corresponding standard clause will be regarded as invalid; and in turn, if the obligation of calling attention is performed, such clause will be considered as valid. It's obvious that such wrongful approach to judgment will lead to a wrongful proposition. In fact, after performance of the obligation of calling attention, there is only the legal effect that the standard clause can be included into the contract, but such clause is not necessarily valid. In the next, a substantive review should be carried out based on the criteria of "whether it improperly excludes the rights of or imposes heavier obligations on the other party, or exempts the liability of the formulating party", so as to determine whether the clause is valid. Attentions should be paid to the logic order of formal review and substantive review in making the judgment.

#### **4.1.2 Ambiguous rules on evaluation of validity of standard format evaluation format**

Article 497 of the *Civil Code* stipulates: A standard clause is void under any of the following circumstances: (1) existence of a circumstance under which the clause is void as provided by the Code,

and the invalid disclaimer; (2) the e party providing the standard clause unreasonably deprives the other party of his rights, imposes heavier liability on the other party, or exempts himself from the liability.

In Article 497 of the *Civil Code*, although the qualifier “unreasonably” is added before “exempts or alleviates himself from the liability, imposes heavier liability on the other party, or restricts the main rights of the other party”, the question is that the disclaimer can be valid in principle upon calling for attention in accordance with Article 496 of the *Civil Code*. However, in accordance with Article 497, “unreasonable disclaimer” will be invalid even if there is calling for attention. Then, what criteria should be adopted for determining the concept of “unreasonable”?

#### **4.2 Micro level: Substantive invalidation of certain typical standard clauses**

##### **4.2.1 Agreed jurisdiction in the clauses for settlement of disputes**

Agreed jurisdiction in the clauses for settlement of disputes may impede consumers’ right to exercise litigation right. The litigation right is the basic right of the parties to file a civil lawsuit. When a party files a civil lawsuit and requires the court to protect its civil rights and interests, the basis lies in its litigation right.<sup>[4]</sup> If the agreed jurisdiction in standard clause provides that it can be governed only by the court of the domicile of the E-commerce platform or the competent court designated by the E-commerce platform, there will be excessively high litigation costs for consumers due to far distance or high transportation costs in case the consumer is far from the place specified in the standard clause or the defendant constantly changes its domicile. As a result, the party will be discouraged when attempting to defend its own rights.

##### **4.2.2 The clauses for unilateral revision, suspension and termination of services by E-commerce platforms from time to time**

The clauses for unilateral revision, suspension and termination of services by E-commerce platforms from time to time grants E-commerce platforms great power to master the legal relationship between the two parties, while users are in a totally passive position as to whether and how the agreement is modified. Consequently, this may lead to expansion of the rights of E-commerce platforms, which infringes the legal rights and interests of consumers. When a user agreement provides that the E-commerce platform shall be entitled to modify the terms of agreement as needed (any unrestrained forms of needs), the boundary of its rights shall be reasonably limited. If an E-commerce platform gives itself the right to modify the terms at any time, the standard contract will become an impunity clause that allows the E-commerce platform to expand its rights arbitrarily and unfairly and reduces and excludes the rights of users.

##### **4.2.3 Clauses for collection of users’ data, use habits and preferences**

Taobao’s privacy policy stipulates that users can disable relevant recommendation functions, but there is no clear statement that can reject the platform to collect user information. In the privacy policies, Jingdong and Pinduoduo stated that individualized services are not available without provision of specific information, without saying how to disable the functions. The implicit loopholes of clauses have essentially deprived users of the right to refuse disclosure of private information. Furthermore, the user information collected by E-commerce platforms may be shared with a third seller under a sharing clause which fails to provide detailed information about to whom the user information is provided and what user information is disclosed.

Therefore, the loopholes of these clauses not only deprive users of the right to know, but are also suspected of intentional exclusion of users’ rights, thus making the standard clause invalid.

##### **4.2.4 Standard format clauses for offers, invitation to offers and undertakings**

In a general contract, both the offeror and the acceptor are specific under specific circumstances. However, if the relationship between them is already fixed under the standard clause before conclusion of the contract, it will not only make it impossible for the law to adjust the invitation to offer and offer relationship between the two parties, but also violate the legal basis of offer and invitation to offers. Therefore, there are possibilities that such standard clause may exclude the main rights of the other party and cause its invalidity.

## **5. Solutions to the Problems at Macro and Micro Levels with Standard Contracts**

### **5.1 Macro level: Legal regulation method regarding judgment of validity of standard clauses**

#### **5.1.1 The establishment and validity of contracts shall be judged separately**

Article 496 of the *Civil Code* stipulates that: A standard clause refers to a clause formulated in advance by a party for the purpose of repeated use which has not been negotiated with the other party when concluding the contract. Upon concluding a contract, where a standard clause is used, the party providing the standard clause shall determine the parties' rights and obligations in accordance with the principle of fairness, and shall, in a reasonable manner, call the other party's attention to the clause concerning the other party's major interests and concerns, such as a clause that excludes users' rights or improperly exempts the liability of the platform. The article also provides that the party providing the standard clause shall be obliged to give explanations of such clause upon request of the other party. Where the party providing the standard clause fails to perform the obligation of calling attention, thus resulting in the other party's failure to pay attention to the clause concerning adjustment of his major interests and concerns, the other party may claim that such clause does not become part of the contract.

After the revision of the *Civil Code*, the incorporation rule provides that if a party providing the standard clause fails to perform its obligations of making explanation or calling attention, the counterparty can claim that they haven't reached an agreement on the clauses to which attention is not called for, thereby excluding these terms from being incorporated into the contract.

First of all, a premise must be clarified: service contracts of E-commerce platforms are generally drawn up for all users who need to use the platforms. Therefore, in a broad sense, these registration agreements are fixed contracts drafted in advance, and their full text is concluded in form of standard clauses. In this case, the obligation of calling attention to be performed by E-commerce platforms in the agreement is only limited to the clause of "improperly excludes the rights of or imposes heavier obligations to the other party, or exempt their own liability". It can be seen that the "incorporation rule" is adopted in the *Civil Code* for the provider of standard clause who fail to perform the obligation of calling attention. Namely, "a non-conforming clause shall not become part of the contract".<sup>[5]</sup>

Under the guidance of the incorporation rule, the review of standard contracts of E-commerce platforms covers two aspects: the establishment and the validity. The clause can be recognized being incorporated into the contract only when the party providing the contract has performed the obligation of calling attention to the clause which "improperly excludes the rights of or imposes heavier obligations on the other party, or exempts its own liability". In judicial practice, in ruling out the legal effect of a standard clause where the obligation of calling attention is not performed, the "incorporation rules" should be adopted to directly exclude the clause from the contract.

#### **5.1.2 The logic order of formal and substantive review should be distinguished**

To sum up, the primary conclusion is: even if the obligation of calling attention is performed, the only legal effect is that the standard clause can be incorporated into the contract, but it is not necessarily valid. Next, the content of the standard clause should be subject to substantive review, so as to determine whether it is valid. There is a fixed logic order in terms of their application.

When reviewing the validity of standard clauses, formal review and substantive review are inseparable and closely intertwined. In case of a disputable standard clause, both substantive and formal review should be conducted. Furthermore, the substantive review should be conducted at two levels. At the first level, it should be reviewed "whether major interests are involved" in the standard clause, so as to determine whether there is a need to call for special attention. At the second level, it should be reviewed whether the rights and obligations are reasonable concerning adjustment of the clause which involves major interests.

#### **5.1.3 The substantive review should be guided by the principle of fairness**

A further question raised above is: since a clause may be still invalid even if attention is called to the "unreasonable" disclaimer in accordance with Paragraph 2 of Article 497 of the *Civil Code*, what criteria should be adopted to determine whether it is "unreasonable"?

The compliance with the principle of fairness should be firstly based on the provisions of law. The provider of standard clause cannot incorporate all its desired rights and obligations into the contract, because this violates relevant legal provisions which contain profound legal meanings and the basic idea of law. Therefore, the justice must be reviewed.<sup>[6]</sup> When a standard clause violates the legal

provision, it also attempts to exclude the reasonable justice behind the legal provision. It is true that when it comes to a contract, the law should respect the autonomy of will of the two parties to the contract and allow them to agree on non-mandatory clauses. However, in a contract with extremely standard format like the standard contracts of E-commerce platforms, the judiciary should use the concept of “reasonable consumer” with prudence. As to “Users, as a person with full capacity, should carefully read the agreement and understand the meaning of clicking agree during shopping”, if the standard clause is agreed between the two parties based on autonomy of will and the specific legal provisions are excluded, then it grants the standard clause the right to override the law to some extent. In particular, the invitation to offer and offer should be judged as per Articles 472 and 473 of the *Civil Code* on a case-by-case basis, other than the direct agreement in standard clauses of E-commerce platforms.

## ***5.2 Micro Level: The analysis of substantive validity of typical standard clauses***

### ***5.2.1 The agreement on jurisdiction in dispute settlement clauses***

Judging from the perspective of the principle of fairness, as long as the party providing the standard contract does not deliberately prevent the other party from filing a lawsuit, or gain unfair litigation advantages in agreed jurisdiction, or deprive the other party of the freedom to terminate the legal relationship and withdraw from the agreement, it should be recognized that the clause of agreed jurisdiction is valid. The standard clauses regarding the order of dispute settlement procedures are actually similar to standard clauses of agreed jurisdiction, as both are formulated to help platforms to settle disputes more efficiently. Hence, as long as standard clauses do not substantially deprive users of their litigation right, or subjectively and deliberately set obstacles to prevent users from defending their rights, such standard clauses are valid from the perspective of the principle of fairness.

### ***5.2.2 Clauses for unilateral revision, suspension and termination of services by E-commerce platforms from time to time***

From the perspective of the principle of fairness, E-commerce platforms should take the initiative to inform users of the modification of the service agreement, stipulate that users are entitled to give feedback, and make modification based on users’ opinion. If platforms require users to proactively pay attention to the modification of user agreement, or believe that users are obliged to perform such obligation, or consider that users accept the modified standard clause by continuing the use of the platform, it’s obvious that the platforms impose excessively high duty of care on the users and the validity of this clause shall be clearly excluded after substantive review.

### ***5.2.3 Clauses for collection of users’ data, use habits and preferences***

First, websites are not entitled to collect user information that is not related to their functions, such as the contact list in users’ smart device, or capture audio information when a user does not use the voice function of software. Otherwise, this will not only violate the principle of fairness, but also violates the principle of least sufficiency in collection of personal information.

Second, when an E-commerce platform provides user information to a third-party company for data analysis, it should require the third party to assume the same responsibilities in protecting users’ privacy. However, the privacy policies of E-commerce platforms do not expressly state the obligations to protect privacy and the liabilities for breach of the agreement. There are even fewer cases where “equal responsibilities to protect privacy” are provided. The user registration agreement is no more than a list for adjusting the rights and obligations between users and E-commerce platform. The direct provision of user information to a third party under such agreements has gone beyond the reasonable scope of adjustment allowed for registration agree. This behavior essentially aggravates the lease and sales of user information among companies, giving the illegal sales of information a justifiable excuse of “provision of information to a third party for analysis”. In essence, this infringes users’ free right to information.

When the loopholes in the clauses on collection of user data, use habits and preferences lead to foregoing two circumstances, it should be determined that such clauses are invalid due to violation of the principle of fairness.

### ***5.2.4 Standard format clauses for offers, invitation to offers and undertakings***

If the invitation to offer and offer relationship between the two parties are already fixed before conclusion of the contract under the standard clause, this will not only make it impossible for the law

make adjustment to the invitation to offer and offer relationship, but also violate the legal basis of the concept of offer and the invitation to offer. These clauses include “All commodity information displayed on the website is only invitation to offer”, “only the actual information of users’ order constitutes the offer” and “a contract is concluded only for the actually delivered products”, etc. The purpose of these clauses is to grant shops the right of rescission to the quantity and details of commodities displayed on the website. In other words, even if a user places the order, it only constitutes an offer and the shop is entitled to either accept or reject the offer. According to the logic of registration agreement, it significantly increases the freedom of shops but excludes the freedom of users.

In the substantive review, the principle of fairness should be used as a guide to review the validity of similar standard clauses.

## 6. Conclusion

This paper firstly gives a basic analysis of and introduction to the standard clauses of E-commerce platforms in China, reviews their characteristics, and summarizes several types of these standard clauses. In view of the particularity of standard clauses of E-commerce platforms, it is proposed that the standard clauses of network services should subject to restriction and guidance. On the basis that certain logic order should be followed in determining the validity of standard clauses of E-commerce, some ideas are offered on the rules and regulations for determining specific validity of standard clauses of E-commerce platforms.

It’s expected that this study will offer certain help in determining the validity of standard contracts of E-commerce platforms in judicial practice and arouse the thinking on how to define the boundary of rights and obligations stipulated in standard contracts of E-commerce platforms. For instance, what attitude should be adopted toward the emerging operators of Internet platforms in the era with explosive data and fast development of Internet? With increasing Internet cases, there is greater demand for Internet courts and their improvement. Whether new morals are involved in the Internet cases? What kind of new morals are needed in the virtual environment and whether they are based on the old basic framework of civil law? In the future, I will make further reflections and explorations.

## References

- [1] *E-commerce Law of the People’s Republic of China, Article 2.*
- [2] Wang Liming: *Analysis of Provisions on Standard Clauses in the Contract Law, Journal of China University of Political Science and Law, Tribune of Political Science and Law, Issue 6, 1999.*
- [3] *User Registration Agreement of Jingdong, [https://in.m.jd.com/help/app/register\\_info.html](https://in.m.jd.com/help/app/register_info.html).*
- [4] Bi Yuqian: *Civil Action Jurisprudence, China University of Political Science and Law Press, Second Edition, 2021, page 178.*
- [5] Wang Liming: *Scholars’ Proposals for China’s Civil Code and Legislative Reasons, Law Press China, 2005, Page 232.*
- [6] Du Jinglin: *The Exemplary Role of Contract Specification in Regulation of Standard Clauses, Law Science, 2010, Issue 7.*