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E-CONTRACT IN THE LEGISLATION OF UKRAINE

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The analysis of the legislation of Ukraine about place is carried out contract in electronic form. The problems of legal are considered regulation of the conclusion of an electronic contract with the use of electronic signature.

Key words: *electronic contract, electronic signature, essential conditions*

Due to the rapid development of scientific and technological progress, new forms of civil law are emerging, one of which is the conclusion of an electronic contract.

The Civil Code of Ukraine (CC) establishes legal requirements and mechanisms for remote contracting and execution of transactions with the use of electronic information and communication tools and technologies, which will guarantee the legality, transparency and reliability of such operations and, in turn, will accelerate integration processes in the global information space [1].

According to Article 626 of the CC: «A contract is an agreement of two or more parties aimed at the establishment, modification or termination of civil rights and obligations». ***An e-contract is an agreement of two or more parties, designed to***

establish, modify or terminate civil rights and obligations, and is made out electronically .

According to Article 639 (2) of the CC, a contract concluded by information and telecommunication systems with the consent of both parties shall be considered to be concluded in writing. An electronic contract must contain all the essential conditions for the relevant type of contract, otherwise it may be declared unspecified or invalid due to the failure to comply with the written form by direct instruction of the law.

The purpose of signing the contract is the need to identify the signatory, to confirm the consent of the signatory to the terms of the contract, as well as to confirm the integrity of the data in electronic form. This means that if we have an electronic form of the contract, then we need to sign it by electronic signature.

According to Article 12, paragraph 1 of the Law of Ukraine "On E-Commerce", the moment of signing the electronic contract is the use of:

- electronic signature or electronic digital signature provided that all parties to the electronic legal agreement use electronic digital signature means;
- electronic signature with a one-time identifier defined by this Law;
- an analog of a handwritten signature (facsimile reproduction of a signature by means of mechanical or other copying, another analogue of a handwritten signature) with the written consent of the parties, which must contain samples of the corresponding analogues of handwritten signatures [2].

Creating a separate electronic contract as a separate electronic document does not require every electronic legal agreement. That is, it means that the electronic contract can be concluded in a simplified form, but can be classically - as a separate document.

An electronic contract, in addition to the essential conditions for an appropriate type of contract, defined by the CC, may contain information on:

- technology (procedure) of signing the contract;

- the procedure for creation and imposition of electronic signatures by the parties to the contract;
- possibility and procedure of making changes to the terms of the contract;
- the manner and procedure of accepting the offer to conclude an electronic agreement (acceptance);
- the procedure for exchanging emails and information between the parties in the course of their obligations;
- technical means of identification of the party;
- the procedure for making changes to a wrongly sent acceptance;
- proposals to conclude an electronic contract (acceptance);
- the way of storing and presenting electronic documents, messages, other information in electronic form and conditions of access to them;
- conditions for making and receiving paper copies of electronic documents;
- possibility of choosing the language used during the conclusion and execution of the contract.

An electronic contract is concluded by offering it to be concluded (bid) by one party and its acceptance (acceptance) by the other party.

Upon receipt by the person who submitted the proposal to conclude such contract, the electronic contract will be considered to have been accepted.

The offer to conclude an electronic contract (offer) can be made by sending a commercial electronic message, placing the offer (offer) on the Internet or other information and telecommunication systems. Such a proposal may include the terms contained in another electronic document by forwarding (sending) it. The person to whom the offer is addressed to conclude an electronic contract (offer) must be given unimpeded access to electronic documents, including the terms of the contract, by forwarding (sending) them. The inclusion in the electronic agreement of the conditions contained in another electronic

document by redirection (sending) to such document, if the parties to the electronic agreement were able to read it, cannot be a ground for declaring the transaction void.

The response of the person to whom the offer to conclude an electronic contract is accepted (acceptance) may be provided by:

- sending an electronic message to the person who has made an offer to conclude an electronic contract;
- filling in the application form on acceptance of such proposal in electronic form;
- taking actions that are considered acceptance of the offer to enter into an electronic contract if the content of such actions is clearly explained in the information system in which the offer is placed, and these explanations are logically related to it.

An offer to conclude an electronic contract (offer) or electronic contract must contain information about the possibility of the party receiving such an offer or contract in a form that makes it impossible to change the content.

If the buyer (consumer, customer) enters into an electronic contract by placing an order using information and telecommunication systems, the seller (contractor, supplier) is obliged to promptly confirm receipt of such order. An order or confirmation of placing an order is considered to have been received at the moment when the party to the e-contract accessed it. If the conclusion of the e-contract takes place in the information and telecommunication system of the e-commerce entity, in order to accept the offer, the person must identify himself in such system and answer the acceptance of the offer (acceptance) in the order specified in part six of this article. Such a document will be drawn up in an arbitrary form and will contain the essential conditions prescribed by law for the relevant contract.

The e-commerce entity's information system proposing to conclude an e-contract must provide the technical capacity of the person to whom the proposal is addressed to modify the content of the information provided by the time the offer is accepted.

The place of conclusion of the electronic contract is the location of the legal entity or the place of actual residence of the natural person who is the seller (contractor, supplier) of goods, works, services.

The moment of fulfillment of the seller's obligation to pass on the goods to the buyer is determined in accordance with the provisions of the Civil Code of Ukraine on sale, unless otherwise provided by this Law. If the subject matter of the e-contract is the provision of e-commerce services, the obligation of the supplier to the consumer shall be considered fulfilled at the moment when the service provided by the supplier complies with the properties defined by the contract or the legislation. If the subject of the e-contract is the execution of works in the field of e-commerce, the obligation of the performer to the customer is considered fulfilled at the moment when the result of the completed work meets the requirements established by the contract or legislation.

An electronic contract may specify a different time for the fulfillment of obligations between the parties. The buyer (customer, consumer) must receive confirmation of the electronic transaction in the form of an electronic document, receipt, merchandise or cash receipt, ticket, coupon or other document at the time of the transaction or at the time of the seller's obligation to hand over the goods to the buyer.

The confirmation of the electronic transaction must contain the following information:

- ✓ the conditions and procedure for the exchange (return) of goods or refusal to perform work or provide services;
- ✓ the name of the seller (contractor, supplier), its location and the procedure for claiming the goods, works, services;
- ✓ warranties and information about other services related to the maintenance or repair of the product or the performance of the work or the provision of the service;
- ✓ the procedure for termination of the contract, if its term is not determined.

This provision does not apply to electronic transactions related to the one-time provision of electronic information services or intermediary services in the information sphere, remotely paid for. The provider of such services should allow the consumer to familiarize himself with the name of the provider, its location and the procedure for accepting a claim for the service. An electronic contract concluded by means of electronic messaging, signed in accordance with the procedure established by Article 12 of the Law of Ukraine "On E-Commerce", is considered to be equivalent to a legal contract concluded in writing. Each copy of an electronic document signed with it is an original of such document.

According to Article 1, paragraph 1, paragraph 1 of the Law of Ukraine "On Electronic Confidential Services" electronic signature - electronic data which is added by the signer to other electronic data or logically linked to and used as a signature [3].

A qualified electronic signature has the same legal effect as a handwritten signature and has the presumption that it is consistent with a handwritten signature.

Therefore, an electronic signature or seal cannot be invalidated and cannot be considered as evidence in court cases solely on the grounds that they have an electronic appearance or do not meet the requirements for a qualified electronic signature or seal.

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