
WEBSITE AGREEMENTS

Website agreements, also referred to as electronic contracts are displayed on a webpage. They are governed by the Indian Contract Act, 1872 and the Information Technology Act, 2000. Like all other contracts, e-contracts are valid and binding agreements if they fulfil essential conditions laid down in the Contract Act namely; offer and acceptance, law full consideration and free consent. Any stage in the formation of such contracts, be it proposal or acceptance, may be expressed in an electronic form or by means of an electronic record. The Supreme Court in *Trimex International FZL Ltd Dubai Vs Vedanta Aluminium Ltd India*, has held that a valid contract can be concluding after verification of electronic records like emails and terms and conditions.

- 1. Contracts entered through emails:** electronic contracts may be in the form of a contract that is entered into by way of communication through emails. Forming a binding contract through email, involves communication of offer, acceptance and other negotiations of the deal.
- 2. Click-wrap agreements:** this is the most common form of e-contract found online. It consists of list of term and conditions, to which the user can either agree by clicking on the 'I agree' icon or disagree by clicking 'Cancel.' There is no scope for negotiation in such contracts. An example of these is found in the disclaimers on websites or software licenses before installation. Such agreements in India have been intensively challenged and it is always recommended that such agreements are carefully drafted to avoid litigation at a later stage.
- 3. Browse - wrap agreements:** unlike a click-wrap agreement, where the user must expressly accept the terms and conditions by clicking on an "I agree" box, a browse wrap agreement (usually in the form of a hyperlink at the bottom of the website) do not require this type of express acceptance of the terms. Here, the mere use of a product or service, for instance, browsing through a website or downloading the product will amount to user's accent to the contract. The enforceability of such e-contracts is however dependent on whether the user had actual or constructive notice of the displayed terms and conditions.

4. **Shrink-wrap agreements:** such agreements are found inside a sealed package of tangible product, where one cannot see the agreement until the product has been used or purchased. For example, software CD came packaged in plastic with a notice that by tearing the plastic, the user will be deemed to have assented to the terms of use which are enclosed in the CD. Such agreements however, for some exceptions, are found unenforceable on account of inadequate notice to the user.

To ensure enforceability of website agreements or standard forms of e-contracts, it essential for websites to provide adequate notice of the contract. A good example of such notice is this caveat provided conspicuously on the first page of a website:

“PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION CLAUSE.”

Not only is the notice in large font, bold caps and italics, it also specifically mentions a key provision of the agreement (the arbitration clause), so that users cannot deny notice later in time by saying, for example that she did not read the agreement in entirety.