

The Validity of Electronic Contracts (E-Contracts) Using Click-Wrap Agreements

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Abstract

The use of e-commerce in trade has significantly affected the international community in general and Indonesian society in particular, and it raises legal questions about the requirements for the validity of electronic contracts. E-commerce contracts commonly rely on click-wrap agreements, in which a user accepts standard terms displayed on a screen before completing a transaction. This study addresses two issues: (1) the validity of electronic contracts (e-contracts) that use click-wrap agreements, and (2) the legal consequences arising from such contracts. It is normative juridical research that employs a statutory approach and a conceptual approach. The findings show that a click-wrap agreement, as a form of electronic contract, is implicitly recognised in the Indonesian legal system through the Law on Electronic Information and Transactions, with further technical provisions in Government Regulation No. 71 of 2019. Such a contract is valid only if it satisfies the requirements of consent, legal capacity, a specific object, and a lawful cause; consent given by clicking "agree" remains governed by Article 1320 of the Civil Code and must be free from coercion, mistake, or fraud (Article 1321). Although the agreement is normatively valid, freedom of contract in click-wrap agreements is formal rather than substantive. The legal consequences include unequal bargaining positions, limited user understanding, the dominance of standard clauses, and the absence of comprehensive technical regulation, which affect the balance between the parties, consumer protection, legal certainty, law enforcement, and the development of contract law. Stronger regulation and clearer oversight are therefore needed.

Keywords: validity; electronic contract; click-wrap agreement; freedom of contract; consumer protection

INTRODUCTION

Technological progress has produced wider internet access and new technological innovations that allow users to do business more efficiently, with more space and almost unlimited choice. Indonesia is no exception: the rapid development of technology has significantly changed the way business is conducted (Widarto, 2021). More and more people are therefore moving from conventional cooperation to cooperation carried out electronically.

Cooperation is founded on an agreement that is frequently set out in a written agreement or contract. Under Article 1338 of the Indonesian Civil Code, the principle underlying a contract is freedom of contract, which means freedom to determine the content of the agreement and to choose the counterparty. The principle is universal: every individual has the right to decide whether or not to enter into a contract, provided that it does not harm the public interest and that the contract is fair and balanced (Ali et al., 2022).

One application of freedom of contract is the electronic contract, which can take many forms, such as online purchases, cloud computing services, and business cooperation. In business cooperation, an electronic contract allows the parties to regulate the purpose of the cooperation, the division of responsibilities, and the sharing of profits through electronic documents. Its main advantages are ease of access and information management: the parties can access the contract anywhere and at any time, physical meetings are less necessary, and revisions can be made easily online, which reduces errors and speeds up business processes. These advantages are especially attractive for companies and individuals engaged in cross-border agreements.

Zein (2009) defines electronic transactions (e-commerce) as legal acts performed using computers, computer networks, and/or other electronic media. Ding, as cited in Suparni (2009), describes e-commerce as a commercial transaction between a vendor and a purchaser, or parties in a similar contractual relationship, for the supply of goods or services or the acquisition of rights, concluded in an electronic medium without the physical presence of the parties, on a public and open network such as the internet, regardless of national boundaries. Simply put, e-commerce is modern trade conducted through electronic media in which the parties are not physically present. As a result of the use of electronic media in business, the conventional economic system is being transformed into a digital one.

These developments affect legal rules. Article 1320 of the Civil Code sets out four requirements for a valid agreement: consent, capacity to make an agreement, a specific subject matter, and a lawful cause. The requirements apply to conventional sales agreements and to sales agreements made online, so the rules on online sales still refer to Article 1320; where the four requirements are met, the agreement is valid and binds the parties. The question is how this applies to online agreements in which the parties never meet face to face. In Indonesia, electronic sales agreements are regulated by, among others, (1) the Civil Code; (2) Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law); and (3) Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions (GR 71/2019). Before the EIT Law, e-commerce was already touched by several statutes, including those on copyright, patents, trademarks, telecommunications, and consumer protection, and it is now also regulated by Government Regulation No. 80 of 2019 on Trading Through Electronic Systems (GR 80/2019), which was mandated by Articles 65–66 of Law No. 7 of 2014 on Trade.

The relationship among these instruments is not free from problems. Article 46(2) of GR 71/2019 is in harmony with Article 1320 of the Civil Code, whereas Article 52 of GR 80/2019 contains six provisions on the validity of electronic agreements and thereby adds two requirements: conformity

with the terms and conditions in the electronic offer, and consistency between the information in the electronic contract and that in the electronic offer. Because these conditions do not appear in Article 1320 or other statutes, and a government regulation ranks below a statute, they can be seen as a deviation from the hierarchy of legislation under Law No. 12 of 2011 and from the principle of *lex superior derogat legi inferiori*. The principle of *lex specialis derogat legi generali* offers no solution either, since it requires the special rule to be at least equal in rank to the general rule (Gunawan & Waluyo, 2021). The result is ambiguity and legal uncertainty for an increasingly massive volume of electronic trade.

Contracts in e-commerce commonly take the form of click-wrap agreements (Boykin, 2012), that is, contracts for the purchase or use of goods or services offered online by a merchant (Giancaspro, 2017). Applying click-wrap agreements, including within smart contracts, is intended to make online sales more efficient, fast, and secure. They are, however, presented differently from conventional contracts, because the click-wrap terms are displayed on the screen of the webpage before the consumer completes the transaction. The term remains unfamiliar in Indonesia, and its legality is frequently questioned: is there a legal umbrella that accommodates it, can that regulation govern all of its aspects, what sanctions apply to violations, and which authority may impose them?

Against this background, this study addresses two questions: (1) what is the validity of electronic contracts (e-contracts) that use click-wrap agreements, and (2) what legal consequences arise from such contracts? Theoretically, the study aims to contribute to the development of contract law and to the understanding of the concepts used to assess the validity of e-contracts. Practically, it is intended to serve as a guide for assessing validity and as a reference for policy on the legal consequences of click-wrap agreements.

METHODS

This is normative juridical research, that is, a process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand (Marzuki, 2005). It proceeds logically, methodically, and systematically (Soekanto, 2004) and refers to the legislation that lies at the core of the problem (Muhammad, 2007). The first step was to identify the laws and regulations that govern contract law. Two approaches are used. The statutory approach examines the laws and regulations in force and is used to analyse the validity of click-wrap agreements. The conceptual approach addresses the concepts that arise in the discussion and is used to analyse the legal consequences of such agreements.

The legal materials are of three kinds. Primary legal materials are the binding materials: the

1945 Constitution of the Republic of Indonesia, the Civil Code, Law No. 1 of 2024 (the EIT Law), and GR 71/2019, complemented in the analysis by GR 80/2019 and Law No. 8 of 1999 on Consumer Protection. Secondary legal materials are books, literature, and other scholarly works that explain the primary materials. Tertiary legal materials, such as legal dictionaries, articles, and internet sources, provide guidance on both.

The materials were collected through documentation study: recording and identifying the relevant primary and secondary materials, inventorying them with a card system, and classifying them according to the structure of the study. The analysis is descriptive, systematic, evaluative, and argumentative. Interpretation begins with authentic interpretation, using the definitions in the legislation; where this is insufficient, grammatical interpretation is applied using dictionary meanings, followed by systematic interpretation, which looks for the relationship between one article and another within the legislation in force.

Results and Discussion

Regulation of electronic contracts and click-wrap agreements in Indonesia

Click-wrap agreements are not yet regulated explicitly and specifically in Indonesian legislation. As a form of electronic contract, however, they have been indirectly recognised and regulated through the provisions of contract law in force. Electronic contracts were first regulated in the EIT Law (Law No. 11 of 2008, amended by Law No. 19 of 2016 and Law No. 1 of 2024), which sets out a definition and affirms good faith and binding force. Article 1(17) defines the electronic contract; Article 17 allows electronic transactions in the public or private sphere and obliges the parties to act in good faith; and Article 18(1) provides that electronic transactions set out in an electronic contract bind the parties. Article 19 requires the electronic system used to be based on the agreement of the parties, and Article 16(1) sets minimum requirements for operating an electronic system: it must be able to redisplay information in full, protect the information, operate according to its procedures, be accompanied by procedures or instructions the parties can understand, and have a sustainable mechanism. Salim (2020) notes that electronic contracts can take seven forms in practice: sales, electronic money-lending platform services, electronic loans, unsecured credit, procurement of goods or services, partnerships, and services.

Because the EIT Law does not regulate the requirements for validity or the elements of an electronic contract, the Civil Code fills the gap (Darmayanti & Ginting, 2025; Suwadi et al., 2023). Since a click-wrap agreement is presented through an application or software in which the parties agree digitally, usually by clicking "agree", it falls implicitly within the category of electronic contract under the EIT Law (Azmi, 2021). GR 71/2019, as the implementing regulation, clarifies and adds to

these provisions in Articles 45 to 48. Article 45 sets out the principles of electronic transactions: good faith, prudence, transparency, accountability, and fairness. Article 46(1) confirms that the electronic contract is one form of agreement for an electronic transaction, and Article 46(2) states that it is valid if there is an agreement of the parties, it is made by legal subjects who are competent or authorised to represent, there is a specific matter, and the object of the transaction does not conflict with legislation, morality, and public order. This mirrors Article 1320 of the Civil Code in both order and category (subjective and objective requirements), so the validity of an electronic contract does not conflict with the Civil Code. Article 47 adds three further points. First, an electronic contract addressed to Indonesian residents must be made in Indonesian (Article 47(1)), which helps the parties understand their rights and obligations (Kurdi & Yamin, 2025). Second, an electronic contract that uses standard clauses must comply with the law (Article 47(2)). Third, it must contain minimum elements (Article 47(3)) that mirror the three elements of a conventional contract: essential elements (identity of the parties, specification of the object, terms of the electronic transaction, and price and costs), natural elements (cancellation procedures and the right of the aggrieved party to return goods or request replacement for hidden defects), and accidental elements (the choice of law for settling the transaction).

Articles 29 and 30 of GR 71/2019 impose duties on electronic system operators, defined in Article 1(4) as any person, business entity, state administrator, or community that provides, manages, and/or operates an electronic system. Article 29 concerns the information that must be conveyed to users, in order to ensure transparency, while Article 30 concerns the features that must exist in the system, in order to ensure security and user control. Neither explains how ticking a box or clicking "agree" can be regarded as consent given consciously and voluntarily. Because the norms only require the terms to be *conveyed*, not *emphasised*, users can technically give up rights without focused acceptance, and the norms thus functionally perpetuate blind acceptance.

GR 80/2019 addresses electronic contracts within the narrower scope of trading through electronic systems. It provides that electronic contracts may be concluded automatically and that their validity cannot be denied unless an error in the automated system is proven (Article 47(1)–(2)), as in typical online purchases where the consumer clicks "agree" or "disagree" (Saparyanto, 2021). It recognises sale and licence agreements, including end-user, modification and development, public, sharing, and sub-licences (Article 51). Article 52 adds the two validity requirements discussed in the Introduction. Because the rules state clearly what may and may not be traded, contracts in e-commerce are indirectly deemed to satisfy the lawful-cause requirement (Syahrin, 2020). The regulation also allows electronic signatures (Article 54), obliges business actors to provide a downloadable soft copy and a storable

hard copy to the consumer (Article 56), and provides that a technical error in the electronic system makes the electronic contract null and void (Article 57).

Doubts about the validity of electronic contracts nevertheless persist, particularly among judges who regard digital documents as not equal to physical ones (Baetoni et al., 2025). A contract is assessed not only by its form or medium but also by the substance of the agreement on which the legal relationship rests. Article 5(1)–(2) of the EIT Law confirms that electronic information, electronic documents, and their printouts are valid legal evidence and extend the evidence recognised under procedural law (Riadi et al., 2022). Because an electronic contract is strongly shaped by the electronic system in which it is made, judges should also assess how the contract was created in that system, so that proof, whether as a soft file or a hard file, is legally certain.

In practice, electronic contracts are no longer drafted as physically signed documents; consent is shown through affirmative acts such as clicking an approval button, filling in an electronic form, or uploading a digital signature (Saparyanto, 2021; Widarto, 2021). Table 1 shows the main forms of electronic contract used in online business in Indonesia.

Table 1. Forms of electronic contracts used in online business practice in Indonesia

No	Form of electronic contract	Characteristics	Field of use
1	Click-wrap agreement	Consent by clicking	E-commerce, digital applications
2	Browse-wrap agreement	Implied consent	General service websites
3	Smart contract	Executed automatically	Digital investment, blockchain

Source: processed secondary legal materials.

The table shows that forms of electronic contract keep developing with the needs and complexity of digital transactions. Click-wrap agreements dominate retail digital transactions because they bind users quickly. Browse-wrap agreements are used mostly in general information services, which do not always create intensive legal relationships. Smart contracts are more complex and have much broader legal implications, because performance is executed automatically by a pre-programmed algorithm and is no longer fully under the control of the parties (Agustianto & Situmeang, 2025).

Validity of click-wrap agreements under Article 1320 of the Civil Code

— The validity of an electronic contract cannot be separated from the basic principles of contract

law in Article 1320 of the Civil Code (Syamsiah, 2021). The four elements of consent, capacity, a specific object, and a lawful cause remain the main parameters for judging whether a digital agreement is valid, and the electronic form does not by itself remove them. Table 2 summarises the requirements and their digital implementation.

Table 2. Requirements for the validity of electronic contracts under civil law and the EIT Law

Element of validity	Legal basis	Digital implementation
Consent	Article 1320 Civil Code	Click on the consent button
Capacity	Article 1329 Civil Code	User identity
Specific object	Article 1333 Civil Code	Digital goods/services
Lawful cause	Article 1337 Civil Code	Does not violate the law

Source: processed secondary legal materials.

Consent. Consent, the first subjective requirement, is the meeting of the wills of the parties. In an ordinary agreement it is usually expressed by signing the contract, whereas in a click-wrap agreement it is expressed by the user's active click on the acceptance button. Pressing "Accept" or "I Agree" can be regarded as consent between user and service provider: the user clearly declares agreement to the terms. Although there is no handwritten signature, the consent remains valid because it is given through an electronic system and shows an agreement of the parties. Consent is nevertheless the element most prone to dispute, since users often accept without reading the standard clauses, which raises the question whether the will was truly formed freely (Widyawati et al., 2025).

Capacity. In principle everyone is competent to contract unless the law declares otherwise, as with minors and persons under guardianship. In click-wrap practice, however, age verification rests only on the user's unilateral statement, with no further checks, so a person who is not legally competent may still accept the agreement. Because capacity is a subjective requirement, an agreement proven to have been accepted by a person below the required age is not void by law but can be annulled on request (Ginting et al., 2024).

Specific object. The object must be clear and determinable, whether goods, services, or particular rights and obligations. In a click-wrap agreement the object is generally the provision of a digital service, access to an application, use of a platform, or use of certain features, and it is usually formulated in the terms shown to the user before consent is given (Martinelli et al., 2024).

Lawful cause. Under Article 1337, a cause is unlawful if it conflicts with legislation, morality, or public order. Click-wrap agreements are generally made for a lawful purpose, namely to regulate the legal relationship between provider and user. Some clauses, however, may violate the principle of

lawful cause if they are unfair standard clauses, such as a unilateral transfer of responsibility or an excessive restriction of consumer rights. If the content of the agreement does not conflict with legislation or morality, the click-wrap agreement can be regarded as valid (Arta et al., 2026). Validity is also affected by the electronic signature: a certified electronic signature offers greater security and legal certainty than an uncertified one, and problems arise when high-value transactions are authorised only by signature systems that do not meet adequate security standards (Susilowati et al., 2025).

Normatively, therefore, the four requirements of Article 1320 are in principle satisfied by click-wrap agreements.

Validity of click-wrap agreements in light of freedom of contract

To judge whether such an agreement really reflects freedom of contract, a deeper analysis is needed. Article 1338 of the Civil Code provides that lawfully made agreements apply as law to those who make them, cannot be withdrawn except by mutual consent or on statutory grounds, and must be performed in good faith; Article 1339 complements it by tying the agreement to propriety and fairness (Rusli, 2015). The freedom it protects covers the freedom to decide whether to make an agreement, to choose the counterparty, to determine its form, content, and manner of conclusion (Maramis et al., 2023), and is limited by law, including the special formalities some agreements require (Retnowati et al., 2021). These principles also apply to click-wrap agreements, which require the user's explicit consent through an active act such as clicking "I Agree" or ticking a box after being shown the terms.

Zweigert and Kötz, as discussed by Rusli (2015), identify three aspects of freedom of contract: freedom to make or not make a contract, freedom to choose the contracting party, and freedom to determine the content and terms. On the first aspect, a click-wrap agreement formally gives the user a choice to accept or refuse, but the freedom is limited because refusal means the user cannot access the service; it is formal and contains an element of indirect compulsion. On the second, the freedom to choose the counterparty is theoretically available, since users may choose whether to use a given provider, but choices are often limited, especially for dominant digital services with few alternatives, which weakens the user's position. The third aspect is the least fulfilled: the entire content is set unilaterally by the provider in a standard contract, and the user has no opportunity to negotiate or change it.

It follows that click-wrap agreements in Indonesia are normatively valid under Article 1320 of the Civil Code, but the freedom of contract they embody is formal rather than substantial, owing to the absence of room for negotiation, limited user choice, and the imbalance between provider and user. Good faith acts as a corrective instrument here, because formal validity does not always reflect

material justice, particularly where one party misuses the electronic system for one-sided gain (Atmoko & Noviriska, 2024).

Legal consequences of e-contracts that use click-wrap agreements

Because freedom of contract in click-wrap agreements is limited, several legal consequences arise. *First*, the parties' positions are unbalanced. Consent by clicking "agree" can be regarded as valid consent that satisfies freedom of contract under Article 1338, but Article 1338 presumes that the parties have a relatively equal opportunity to determine the content of the agreement. In a click-wrap agreement the provider has full control over the content, while the user can only accept or refuse, and refusal means no access to the service. *Second*, user understanding and awareness are low. Many users click "agree" without reading or understanding the agreement, usually because it is long and written in legal language that is hard to follow, so consent is often merely formal and given without a real grasp of rights and obligations. *Third*, standard clauses can be detrimental. Click-wrap agreements typically contain clauses drafted unilaterally by the business actor, such as limitations of liability and transfers of risk, which, if not strictly regulated, may conflict with fairness and consumer protection. *Fourth*, technical regulation is lacking and unclear. Existing provisions regulate electronic agreements in general, without clarifying the characteristics, limits, or clause standards of click-wrap agreements, so the assessment of validity in court often depends on how judges interpret the law. Different interpretations can produce different decisions in similar cases and hence legal uncertainty (Arta et al., 2026).

These consequences have implications in five areas. Regarding *legal certainty*, consent given by an active click is regarded as valid consent under Article 1320, and the EIT Law strengthens the standing of click-wrap agreements as binding (Article 18(1); Artanti & Widiatno, 2020), giving the parties clarity about their rights and obligations. Legal certainty is nevertheless not fully realised. Electronic documents are recognised as valid evidence (Article 5(1) of the EIT Law), but paragraph (4) excludes documents that must by law be made in writing, such as notarial deeds. In court, the authenticity of e-mails, screenshots, and digital signatures is often challenged because electronic documents can be manipulated (Tektona & Laoly, 2022). Full harmonisation between the Civil Code and the EIT Law is also lacking, and supervision of standard clauses in the digital sphere remains weak (Fatimatuzzahra et al., 2022).

Regarding the *balance of the parties*, the business actor's dominant position in determining the content means that the principle of freedom of contract shifts in meaning, and fairness is less well served even though the agreement is formally valid. Regarding *consumer protection*, Article 18 of Law No. 8 of 1999 prohibits business actors from including unilateral clauses that transfer

responsibility, restrict consumer rights, or shift risk to consumers; clauses that exclude the obligations or responsibilities of the business actor are known as exoneration clauses (Ardhya, 2017; Marpi, 2020). Freedom of contract therefore cannot be applied absolutely and must be limited by law in order to keep certainty and justice in balance.

Regarding *law enforcement and dispute settlement*, in a dispute a click-wrap agreement is still recognised as valid and binding as long as it meets the requirements for a valid agreement, and judges generally accept the validity of electronic agreements based only on a click. Judges nonetheless have the authority to set aside particular clauses that harm consumers or contradict fairness, so that in resolving disputes they weigh not only certainty but also justice and balance. Disputes often involve parties in different jurisdictions, such as an Indonesian consumer buying from a foreign platform, which makes settlement more complicated. The EIT Law provides for settlement through the courts or alternative dispute resolution, but no effective and simple mechanism exists yet for digital consumers: court proceedings are long and costly, and online mediation has not worked well (Sari, 2022). Finally, regarding the *development of national contract law*, click-wrap agreements show that Indonesian contract law continues to develop with technology. Agreements are no longer limited to conventional written forms, and freedom of contract remains relevant but has to be adjusted in its application. Table 3 summarises the consequences.

Table 3. Summary of the legal consequences of click-wrap agreements

Aspect	Legal consequence	Relevant legal safeguard
Bargaining position	Users can only accept or refuse; freedom of contract becomes formal rather than substantive	Good faith (Articles 1338 and 1339 Civil Code; Articles 17–18 EIT Law)
User understanding	Consent is given without a real grasp of rights and obligations (blind acceptance)	Transparency duties (Article 29 GR 71/2019); Indonesian-language requirement
Standard clauses	Limitation of liability, transfer of risk, and unilateral changes may harm consumers	Article 47(2) GR 71/2019; Article 18 Consumer Protection Law
Regulatory gaps	Divergent judicial interpretation and legal uncertainty	Harmonisation and specific regulation of click-wrap agreements
Enforcement and	Valid and binding if requirements are	Alternative dispute resolution;

disputes	met; unfair clauses may be set aside; online mediation or arbitration cross-border complexity
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Source: processed from the analysis in Sections 4.1 to 4.4.

Overall, the binding force of a click-wrap agreement gives the parties a basis to feel secure in digital transactions, but the legal certainty this promises has not been fully achieved. The main problems are weak consumer protection, doubts about the evidentiary strength of electronic documents, and the limits of digital dispute settlement mechanisms. Stronger certainty requires harmonisation between the Civil Code and the EIT Law, particularly on the requirements for valid electronic agreements, the validity of digital signatures, and the position of electronic documents as evidence, together with firmer regulation of standard clauses and stronger institutional support for digital dispute resolution such as electronic mediation or arbitration (Sari, 2022).

CONCLUSION

This study reaches two conclusions. First, a click-wrap agreement, as a form of electronic contract, is implicitly recognised in the Indonesian legal system through the EIT Law, with further technical provisions in GR 71/2019. The contract is valid only if it meets the requirements in the relevant articles, namely the consent of the parties, legal capacity, a lawful object of the transaction, and compliance with legislation. The mechanism of consent by clicking "agree" or ticking a box still refers to the principle of voluntary consent under Article 1320 of the Civil Code and must not involve coercion, mistake, or fraud as set out in Article 1321. In addition, the standard clauses used in click-wrap agreements must comply with the law, especially the Consumer Protection Law, to prevent one-sided harm to users. Click-wrap agreements therefore bring convenience and efficiency to electronic transactions, but they still demand fairness, legal certainty, transparency, and consumer protection, and each consent must be given consciously and voluntarily. Viewed through freedom of contract, however, the freedom they embody is formal rather than substantive.

Second, the legal consequences of e-contracts that use click-wrap agreements are unequal bargaining positions, low consumer understanding, the dominance of standard clauses, and the absence of comprehensive technical regulation. These conditions affect the balance of the parties, consumer protection, legal certainty, law enforcement, and the development of contract law. Stronger regulation and clearer oversight are therefore needed so that the principle of freedom of contract in click-wrap agreements remains in step with technological development while giving fair legal protection to all parties.

Two recommendations follow. First, practical obstacles still prevent optimal legal certainty:

doubts about the evidentiary strength of electronic documents, the validity of digital signatures, one-sided standard clauses that tend to disadvantage consumers, and the ineffectiveness of digital dispute settlement. Although the legal basis exists in the Civil Code and the EIT Law, protection of the weaker party remains inadequate. Harmonisation of the Civil Code and the EIT Law, tighter regulation of standard clauses, better digital legal infrastructure, and a better understanding of these issues among law enforcement officials are needed so that electronic agreements can function effectively and fairly. Second, the EIT Law does not address unilateral cancellation of a contract because of a party's breach. It should be supplemented with provisions on the responsibility or consequences for a party that breaches an electronic contract.

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