

A Reflection on Contract Formation in an Electronic Commercial Transaction in Cameroon

Ngwa Shu Princewill*

Research Scholar, Faculty of Law and Political Science, University of Dschang, Dschang, Cameroon

Abstract

This research paper reflects on contract formation in an electronic commercial transaction in Cameroon. The main aim is to critically examine how Cameroonian law treats contracts that are formed electronically, looking at aspects of offer, acceptance and the requirements of writing and signature, which are peculiar with an e-commerce contract. Fundamentally, contracts are voluntary exchanges and as such maximum use should be given to party freedom of contract and party autonomy. The methodology employed in this article is purely doctrinal which is based on both primary and secondary data. The paper concludes with some robust recommendations which if effectively implemented will go a long way to enhance commercial transactions in Cameroon.

Keywords: contract, e-commerce, offer, acceptance, electronic signature, electronic writing,

***Author for Correspondence** E-mail: ngwaprincewill@gmail.com

INTRODUCTION

The starting point in the formation of any valid contract is arriving at a consensus from the negotiations of the parties involved. When parties to a contract begin to negotiate there may be a considerable difference between them on various terms of the contract. It is important to note that the e-commerce technology has established a new form of contracting, different from the traditional method, given its paperless character. Hence, the virtual nature of e-commerce presents a dilemma of the legal validity of a contract concluded via the web. The unique feature of this contract (e-commerce) makes one ponder whether contracts concluded over the internet are valid.

The general rule is that a contract is formed when parties reach an agreement on its terms, even orally [1] or by conduct [2], provided that the essential elements for the validity of a contract are met. [3] It is important to note that the Law requires certain agreements to be evidenced in writing [4], or to bear a signature [5] or that it be presented in its original form in order for it to be enforceable. In the context of e-commerce however, the question ordinarily arises of whether a contract formed

via E-Commerce fulfills this requirement of writing, signature or originality.

A key feature of the e-commerce directive is that contracting on the Internet must be legally possible. Hence, member states must ensure that contracts concluded by electronic means are not deprived of legal effectiveness nor validity on account of their having been made by electronic means. Electronic contracts must be considered in the member states' legislation as written contracts. By way of exception, member state law may stipulate that electronic contracting shall not be possible for certain types of contracts such as contracts creating or transferring rights in real estate (excluding rental rights), contracts requiring the involvement of courts, public authorities or professions exercising public authorities, suretyship agreements, contracts regarding collateral securities furnished by persons acting for purposes outside their trades, businesses, or professions, or contracts governed by family law or by law of succession. [6] Beyond these exceptions, national authorities cannot impose mandatory or restrictive rules that are specifically applicable to electronic contracts. This prohibition would appear to facilitate the use

of model e-commerce agreements such as the Electronic Commerce Agreement of the United Nations Center for Trade Facilitation and Electronic Business, [7] and the draft Uniform Rules for Electronic Trade and Settlement of the International Chamber of Commerce [8].

Article 15 of Law No. 2010/021 of 21 December 2010 on Electronic Commerce in Cameroon translates the principle of the validity of an electronic offer by stating that an electronic offer must make mention of the price, the characteristics of the product and the nature of the goods or services. [9]. These conditions are not applicable to contracts concluded through personal e-mails or through individual communications. Article 11 (1) imposes that contracts through electronic means should be accompanied by contractual or general conditions permitting the traceability of contract intended. Obligation of information has been reiterated in Article 11 (2). The exigency of this article is limited to contracts between professionals and consumers [10]. However, the question is asked to know if such an exigency is necessary if the offer has to come from the consumer to the professional [11].

BASIC CONDITIONS FOR THE MAKING OF AN E-COMMERCE CONTRACT IN CAMEROON

The first requisite of a contract is that the parties should have reached agreement. Since the phenomena of agreement is concerned with the presence of the outward and visible signs of assent and bearing in mind that it is often difficult to say at what time such an agreement has been made shall we proceed by considering various stages in the negotiation process. These involve the making of a firm or definite offer and an unconditional acceptance.

Offer

G.H Treitel [12] defines an offer as a statement to the effect that the person making it is willing to contract on the terms stated as soon as these are accepted by the person to whom the statement is addressed. An offer is an expression of willingness to contract on

specified terms, made with the intention that it is to be binding once accepted by the person to whom it is addressed [13].

Offer takes effect when it reaches the addressee as mentioned in Articles 211 (1) UAGCL and 2/3 (1) of the OHADA Draft Uniform Act on Contract Law. [14] In addition, it may be revoked if the revocation reaches the recipient before the latter forwards its acceptance. [15] If the two provisions mentioned above do not raise any major difficulties in the light of traditional means of communication such as paper, it is necessary to question their applicability in the presence of new information technologies, because the same electronic element must contain the elements which "print to a contract its own coloring and in the absence of which it cannot be characterized". In electronic matters, when can we say that the offer has reached the recipient? To answer this question, it should be recalled here that the UAGCL and the OHADA Draft Uniform Act on the Law of Contracts are in chronological order largely inspired by the Vienna Convention and the UNIDROIT Principles. It goes without saying that comments from the provisions of these international texts are applicable to them. Thus, according to the Consultative Committee of the Vienna Convention, the term "reaches", with regard to the means of electronic communication "designates the moment when an electronic communication has entered the server of the recipient of the offer". [16] In the same vein and following comment 4 on Article 1.11 of the UNIDROIT Principles, the offer: "does not need to reach the recipient's hands or be actually read by the recipient. It is sufficient that it be taken by an employee of the recipient who is authorized to accept it, whether it is placed in the recipient's mailbox, or that it reaches the fax machine, the telex or, in the case of electronic communications, it has entered the server of the latter [17].

In terms of electronic communication, a notice of revocation has to enter the offeree's server before or at the same time of the offer. The problem in applying this rule

is online contracting is of course that there is practice hardly any means of faster communication than e-mail or website communication. Another issue is whether it is enough that the withdrawal has entered the offeree's server for it to take effect. In that case, it would have to be presumed that it is read as soon as it is located on the server. The fact that hindrance to read the message may occur due to technical problems may be disregarded, since it is something that can be controlled by the offeree who therefore is the carrier of the risk.

If an offer is not deemed irrevocable it may be revoked if the withdrawal reaches the acceptor before an acceptance is dispatched. When applying this rule to an online acceptance means that the offer is revoked if the withdrawal enters into the offeree's server before the acceptance has left the same server. Thus, in practice this could occur at the same time. In any case, a prerequisite is that the offeree has consented to receive electronic communication of that type to the address. [18] Explicit consent is not necessary and contract interpretation, as well as practices and usages, may help in determining the existence of such consent. As per SellamVIP's terms and conditions, an order is an offer to Sellamvip to buy the product(s) in the order. When one places an order to purchase a product from Sellamvip, they send a message confirming receipt of the order and containing the details of the order (the "Order Confirmation"). If the buyer is using certain Sellamvip Services (e.g. Sellamvip mobile applications) the Order Confirmation may be posted on a Message Centre on the website. The Order Confirmation is acknowledgement that they have received the order and does not confirm acceptance of the offer to buy the product(s) or the services ordered. They only accept the offer, and conclude the contract of sale for a product ordered by the buyer, when they dispatch the product to the buyer and send e-mail or post a message on the Message Centre of the website confirming to the buyer that they have dispatched the product to him (the "Dispatch Confirmation"). If the order is dispatched in more than one package, the

buyer may receive a separate Dispatch Confirmation for each package, and each Dispatch Confirmation and corresponding dispatch will conclude a separate contract of sale between Sellamvip for the product(s) specified in that Dispatch Confirmation. The contract is with SellamVIP. Without affecting the buyer's right of cancellation, he can cancel his order for a product at no cost any time before Sellamvip sends the Dispatch Confirmation relating to that product. This right to cancel does not apply to certain categories of products and services, including digital products or software which are not supplied in a physical format (e.g. on a CD or DVD), once download or use (whichever is earlier) has begun [19].

Acceptance

According to the CISG-AC opinion, an electronic acceptance, reaches the offeror when the acceptance enters the server of the offeror. It is not necessary that the offeror has read the acceptance, but it must be available for him to read. [20] For different reasons an online acceptance may in practice not be effective when it reaches the offeror's server.

Acceptance means accepting an offer outright. [21] Article 213 of the Uniform Act on Commercial Law provides that:

"Acceptance of an offer takes effect when the indication of acquiescence reaches the offeror. Acceptance shall not take effect if this indication does not reach the offeror within the time stipulated or, in the absence of a stipulation, within a reasonable time in the circumstances of the transaction and the means of communication used by the offeror. A verbal offer must be accepted immediately, unless the circumstances imply otherwise" [22].

In the opinion of the Advisory Committee to the Vienna Convention, with regard to new information technologies, "acceptance takes effect at the moment when an electronic indication of acquiescence enters the server of the author of the offer, provided that the latter has consented, expressly or implicitly, to receiving electronic communications of this

type, format and address. The term "verbal" includes real-time electronic sound transmission and real-time electronic communications. An offer that is transmitted electronically in real time must be accepted immediately, unless the circumstances imply otherwise, and provided that the recipient has consented, expressly or implicitly, to receiving such electronic communications of this format and under this address. [23] In the same vein, and with regard to Article 214 UAGCL, [24] The term "verbally" includes electronic sound transmission, provided that the recipient has consented, expressly or implicitly, to receiving electronic communications of that type, format and address. The term "notice" includes electronic communications, provided that the recipient has consented, expressly or implicitly, to receiving electronic communications of that type, format and address. [25] With regard to the acceptance period provided for in Article 215 UAGCL, [26] the same Advisory Committee states that:

"The acceptance period set by the offeror in a real-time electronic communication begins to run when the offer enters the recipient's server. The acceptance period set by the offeror in an email communication begins to run at the time of sending the communication by email. "Instant communication means" include real-time electronic communication" [27]

Along with the Uniform Act on Commercial Law, the OHADA Draft Law on Contracts Law also provides for "acceptance". Thus, according to Article 2/6:

1. "Constitutes an acceptance of any declaration or other behavior by the addressee indicating that he agrees to the offer. Silence or inaction alone cannot be accepted.
2. The acceptance of an offer takes effect at the moment when the indication of acquiescence reaches the offeror.
3. However, if under the offer, established practices between the parties or usages, the addressee may, without notice to the offeror, indicate that he agrees in performing an act, acceptance takes effect at the moment when that act is performed" [28].

Article 2/7 states:

"The offer must be accepted within a period stipulated by the offeror or, failing such stipulation, within a reasonable time, taking into account the circumstances, including the speed of the means of communication used by the author of the offer. A verbal offer must be accepted immediately, unless the circumstances indicate otherwise" [29]

The wording of this provision caught the attention of the Working Group on the 2004 edition of the UNIDROIT Principles. Following the comments and illustrations of these principles:

"An offer must be considered verbal not only when it is made in the presence of the addressee of the offer, but whenever the addressee of the offer can reply immediately. This is the case of an offer made by telephone or communicated electronically in real time (for example in "chat rooms")" [30].

The comments and illustrations also provide guidance on how to determine the "reasonable time, given the circumstances" [31] in a situation where an offer is submitted via an email asking the offer recipient to respond as quickly as possible and where acceptance is given by letter posted. According to the commentary and the illustration, a letter sent by mail in these circumstances does not answer the criterion "as soon as possible". It seems to us that this goes without saying, even if the accuracy is in fact somewhat superfluous, it is in our opinion correct and inconsequential [32].

In the end, it seems that the OHADA Uniform Acts are generally appropriate not only for transactions concluded by traditional means, but also for those concluded electronically. The rules set out there seem to offer solutions, including in an electronic environment. Despite the possible solutions offered by the Uniform Acts, OHADA Member States have taken initiatives, either at the national level or in the framework of regional organizations to legally regulate electronic commerce [33].

SPECIFIC REQUIREMENTS FOR THE VALIDITY OF AN E- COMMERCE CONTRACT IN CAMEROON

The development of e-commerce poses problems with the acuteness of adaptability with efficacy of the laws of proof. In principle, to adduce judicial proof, it is necessary to produce written and signed documents. A basic rule of contract law is that certain types of agreements must be in writing before they are enforced. Absent writing, and the signature of the party charged, a court will refuse to enforce.

The Requirement of Writing in E-commerce

‘Writing’ is itself a basic and understood concept. Obviously, the term includes paper and ink “writing” on stationery, napkins or cardboard, but could also spray-painted contract term on a fifty-foot billboard or statements carved in to the trunk of tree. So long as the words were scratched onto a physical medium serving to “memorialize” or preserve the agreement, the statute of frauds is satisfied. A “writing” preserves the agreement in a medium independent of the parties’ memories and protects against the impermanence of oral promises that dissipate into thin air the moment they are made. If an agreement is recorded within a medium that preserves the intention of the parties, the writing requirement surely would be satisfied.

The current concern is whether electronic contracts classify as “writing”. While a printed copy of a contract form electronically is identical to any other “pen and paper” writing, the less certain case involves “paperless” electronic contracts that exist only in computer memories or on computer screens. Whether the terms of an agreement appear on a web page, in an email, or within a word processing file, the terms are not “etched” onto a permanent medium, rather than the term existing only as a continuous stream of electrons visible momentarily on a computer screen or as a long string of binary code cached in memory and processed by a program that enables one to view and in many cases alter the information. Electronic contracts are

not “reductions” to a tangible form at all, but instead are an intangible composite of electricity, computer code and algorithms that lacks any fixed status. [34] Accepting this as true, how should the law enforce electronics contracts without requiring that each that each agreement or alleged agreement be reduced to a physical copy or printout? [35] UCITA Section 201 presents the new and improved Statutes of Frauds by using the concept of record. [36] Parties need not reduce their agreement to a concise written document, rather the parties merely need to record their agreement so that it could be read or heard again. Section 6 (3) of Law No. 2011/012 of 6th May 2011 on the Framework on Consumer Protection in Cameroon, provides that parties to an agreement or contract shall each be given and shall keep a copy of the documents containing or providing evidence for the transaction.

Under the UAGCL, the formal requirement of writing and signature is not needed for a valid contract to be formed. Article 240 expressly states that:

“A contract for sale of goods need not to be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means.”

In this respect, therefore, apparently, there are no particular difficulties in applying the UAGCL to electronic transactions. Even though the definition of ‘writing’ has not been offered by the new UAGCL. [37] It is therefore necessary to consider whether ‘writing’ under the UAGCL extends to cover electronic communications. This leads to the conclusion that the status of electronic communications under the UAGCL is unclear.

However, such a definition could be found in Article 1/10 of the Draft Uniform Act on Contract Law [38] which is identical to Article 1.11 of the UNIDROIT Principles of International Commercial Contracts 2014. This could possibly accommodate electronic documents. According to the provision, ‘writing’ means any mode of communication that preserves a record of the information

contained therein and is capable of being reproduced in tangible form [39].

Within the CEMAC zone, and within the domain of a veritable digital market, the legislator tends to move towards the direction of this evolution. Henceforth, the requirement of writing will hold for documents on paper as well as electronic documents. It is the result of the new definition of the notion of “writing” which is guided by two fundamental principles. The principles that guide the definition and value of “writing” are the principle of technological neutrality and that of functional equivalence [40].

The principle of “technological neutrality” emanates from the works of the CNUDCIL (Commission des Nations Unies pour le Développement du Commerce International). It signifies that no discrimination should be made between the various techniques that could be used to create, communicate and store information [41].

As stated above, the Law requires certain documents to be evidenced in writing, without which it is not considered valid. The question arises whether a contract concluded via e-commerce means fulfills this requirement of writing. There are divergent views on this point. [42] The Supreme Court of Nigeria’s decision in *Anyaeobosi v. R. T Briscoe Nigeria Ltd* [43] is in conflict with the Nigerian Court of Appeal’s decision in *Nuba Commercial Farms Ltd v. NAL Merchant Bank Ltd & anor* [44], on the issue of the admissibility of Computer print outs as evidence, the Court of Appeal was of the view that the Evidence Act [45] only provides for the admissibility of evidence in book form, and accordingly, held that computer printouts were inadmissible.

Sellamvip terms and conditions indicate that Applicable laws require that some of the information or communications they send to the buyer should be in writing. When using their website, the buyer accepts that communication with them will be mainly electronic. They will contact the buyer by email or provide him with information by posting notices on Sellamvip’s website. For

contractual purposes, the buyer agrees to this electronic means of communication and acknowledges that all contracts, notices, information and other communications that Sellamvip provides to him electronically complies with any legal requirement that such communications be in writing. This section does not affect the buyer’s statutory rights [46].

The UNCITRAL MLEC has purported to solve this problem of divergent rulings as regards the admissibility or otherwise of a data message as a result of its form, as seen in the rejection of fax messages and computer print outs above, simply because they do not appear in the traditional written form, by redefining the concepts of writing, signature and originality to accommodate modern E-Commerce methods, such as electronic mails, telex and a host of others, while establishing criteria for their authenticity, to achieve uniformity as regards E-Commerce.

The validity of a contract and its proof is practically neutralized by the consecration of functional equivalence of electronic writing and paper writing. By the principle of functional equivalence in this context, it is understood generally as the principle which consists of searching the functions that a written paper possesses and transposing them on another support that fulfills the same functions [47]. But there are circumstances that mails will not be considered in the formation of certain contracts which needs special formalism generally justified by considerations of general interest. Legislation requires that such contracts must be in writing or evidenced in writing. [48] The aim is to help protect people and their property against fraud and sharp practices. This is by legislating that certain types of contract could not be enforced unless there was written evidence of its existence and of its terms. [49] The reason is that electronic message can be admitted for proof on the same title like written messages on the basis that the person from whom the message is coming from can be identified. This is to avoid fraud of the parties dealing in electronic commerce. Another pre-condition is that of

guaranteeing the integrity of the message by proving the message received is the same as the message sent and that it has not been tampered with [50].

The technology neutral approach allows the provision to apply to a broad range of circumstances as much as possible. [51] The law holds that the information would be readily accessible so as to be usable for subsequent reference. The words accessible, legible and intelligible to be consulted later on are equivalent to ink and paper writing because it is typically accessible for subsequent reference. Thus, it would be reasonable to expect that electronic mail which is stored when created and by the recipient on receipt, would be accessible for subsequent reference. [52] However there are circumstances like that of a chat room where electronic exchanges are used without expectation that the communications will be stored. Such a use would not be in line with the provisions in article 22 (2) of Prime Ministerial Decree of 2011. With instant messaging, exchange appears on each party's computer screen and disappears after the session ends. Hence, the information would be unavailable for subsequent reference. However, it is possible to copy and paste the exchange to a regular computer file, log the conversation or use a screenshot or screen capture. If parties agree to the use of such methods, then the information would be readily accessible [53].

The Requirement of Signatures in E-commerce

A signature (from Latin signare, 'sign') is a hand written (and sometimes stylized) depiction of someone's name (or some other identifying mark) that a person writes on a document as a proof of identity and will [54]. In most cases, the main purpose of a signature is to evidence the original of the document or approval of it by a particular individual [55]. In other words, the prime function of a signature is to give evidence of the source of the document (identity) or the intention (will) of a person in respect of that document [56].

Signatures perform a variety of functions in the real world, not all of which are legally

effective. Moreover, signatures are treated significantly differently by different legal systems.

In some instances, the legal requirement of a signature can serve as a prerequisite of the validity of the document. Nevertheless, case law in common law countries broadens interpretation of this notion, so long as some physical mark attached to paper indicates its approval or adoption. In *Goodman v. Eban* [57], the court of Appeal held that using "a rubber embossed with the name of the firm" by a solicitor satisfied the requirement of signed bills under the Solicitor's Act 1932. It was stated that:

"Where an act of parliament requires that any particular document be 'signed' by a person, then, prima facie, the requirement of the act is satisfied if the person himself places on the document an engraved representation of his signature by means of a rubber stamp... the essential requirement of signing is the affixing in some way whether by writing with pen or pencil or by otherwise impressing upon the document, one's name or 'signature' so as personally to authenticate the document" [58].

Cameroon stands to gain much in expressly recognizing in line with the western countries, the fundamental value of electronic signature (confidential code) which comprises all the figures resulting from an algometric calculation initiated by the manipulation of a confidential code (secret code between parties) [59].

Law No. 2010/021 of 21 December 2010 on Electronic Commerce in Cameroon defines an electronic signature as:

"A signature obtained by an asymmetrical encryption algorithm that helps to authenticate the sender of a message and verify the integrity thereof" [60].

The person who owns a signature generating device and who acts either in his personal name or as a representative of a natural person or corporate body is an electronic signatory. [61] The UNCITRAL Model Law on

electronic signatures (Model Law) [62] in its Article 2 defines electronic signatures as:

“Data in electronic form in, affixed to, or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message.”

Many documents and legislative products use the term ‘digital’ and ‘electronic’ signatures as synonyms. [63] A digital signature is a mathematical scheme for demonstrating the authenticity of a digital message or document. A valid digital signature gives a recipient reason to believe that the message was created by a known sender, that the sender cannot deny having sent the message, and that the message was not altered in transit. Some statutes like the Statute of Frauds also require in addition to writing, the signature of the party charged with reaching the contract. The purpose of requiring a signature is not an empty formality but serves to authenticate a contract (i.e. to identify the party and the party’s intent to enter the agreement that the writing purports to establish. Digital signatures promote authentication of sender identity, data integrity and non-repudiation. First, digital signatures provide a process to determine who sends a communication and determine the identity of the sender. [64] Second, digital signatures provide information about whether the message has been altered. [65] Third, if a digital signature demonstrates that a message has not been altered and identifies the sender, the sender is unable to repudiate either the contents of the message or that it was sent by him.

Section 21 of Law No. 2010/012 of 21 December 2010 relating to cyber security and criminality in Cameroon provides that any person wishing to affix his electronic signature to a document can create the signature using a reliable device whose technical characteristics shall be determined by instrument of the Minister in charge of Telecommunications [66].

Section 22 goes further by providing that any person using an electronic signature device

must take minimum precautions fixed by instruments referred in Section 21 to avoid any illegal use of the encoding elements or personal equipment related to its signature, inform the Certification Authority about any illegitimate use of his signature, ensure the authenticity of all the data he declared to the electronic certification service provider and to any person he requested to trust his signature.

To answer the question whether digital signatures are legally valid, will depend on the context. If a contract is not required by law to be in writing (and most are not), there is no reason to doubt that it can be made by exchange of electronic messages. The advanced electronic signature shall have the same legal value as the handwritten signature and produce the same effects as the latter [67].

The element of proof is brought out in digital signatures in that the parties rely on them to ascertain that the persons who electronically signed the documents are who they say they are. Article 11 of the Model Law provides that a relying party will bear the legal consequences of its failure to take reasonable steps to verify the reliability of an electronic signature or to observe any limitations may be placed on a certificate. A certificate is a data message that confirms a link between the signatory and the signatory creation data. It provides verification that the person who electronically signed a document is who they say they are. Law No. 2010/012 of 21 December 2010 relating to cyber security and criminality in Cameroon lays down the conditions that an advanced electronic signature must meet:

- The data related to signature creation shall be exclusively linked to the signatory and under his exclusive control.
- Each modification shall be easily detectable.
- It shall be created using a protected device whose technical characteristics shall be defined by an instrument to the Minister in charge of Telecommunications.
- The certificate used to generate signatures shall be a qualified certificate. An instrument of the Ministry in charge of Telecommunications shall determine the

criteria of the qualification of certificates [68].

In the area of e-commerce, it needs generally one professional of e-commerce contracts to prove in case of a contestation that a contract had been made and the same time to understand the length and the breach of his right and obligation. [69] In this regard, a written confirmation of all pieces of information furnished on the screen of the computer was in the nature or in the manner as to protect the professional contracting partner.

E-commerce in a general manner creates fear between contracting parties residing in different states. It therefore becomes necessary to resolve the problem of proof of the transaction effected via the medium of the internet.

A mode of proof in international law has been adopted. It is either:

- The law which governs the content of the contract.
- The law which governs the form of the contract.
- Or the local laws of the country where this contract was concluded.^[70]

The two basic functions of signature as brought out by the UNCITRAL Model Law on electronic commerce are to identify the author of the document and to confirm the author approved of the document. [71] It does not deal specifically with the integrity of the document itself. Other alternative methods may be used for the authentication of the identity in relation to electronic communication information. In Cameroon the law simply states that communications have to be secured by authentication certificates and electronic signatures the same as in public administrations to be spelt out by a particular text. [72] The particular text has not been brought out as yet, as such posing a big problem in the area of authentication of electronic contracts, thus taking electronic commerce backwards.

CONCLUSION

It would suffice to say that the essential ingredients of a valid contract have a distinct connotation in the context of online contract and if all the requirements of law are satisfied,

a valid contract can be formed in all e-commerce transactions. E-contracts are well suited to facilitate the reengineering of business processes occurring at many firms involving a composite of technologies, processes and business strategies that aids the instant exchange of information.^[73] After the analysis of nature of e-contract, it is realized that the position of the consumer is weaker in online shopping contract because the customer has to abide by the conditions postulated by the seller. Sometimes, e-shopping becomes optional for the customers either to accept or to quit the idea of shopping because of requirements of standardized online form and particular mode of acceptance of payment. As the formation of a valid contract forms the corner-stone of e-commerce, it is essential that sufficient attention must be paid to the formation of a valid online contract before finalizing transaction in the click-world. Cameroon has to take steps at its sovereign national level to strengthen the protection of consumers in online business transactions. Such steps could be taken via a detailed law specific to online transactions, or via upgrades to the existing e-commerce and consumer protection laws to fill the gap of uncertainty in the digital business environment [74].

Once the requirements of the law are complied with, online contracts will open up the multifarious opportunities for business. In cyberspace, commercial entities should realize the significance of a valid online contract and take serious concern of the ticklish issues involved therein, because online contracts hold the key to the bright future in the sphere of e-commerce.

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24. Article 214 : « [u]ne réponse qui tend à être une acceptation d'une offre mais qui contient des éléments complémentaires ou différents n'altérant pas substantiellement les termes de l'offre constitue une acceptation. Une réponse qui tend à être l'acceptation d'une offre, mais qui contient des additions, des limitations ou autres modifications doit être considérée comme un rejet de l'offre, et constitue une contre offre ». Les commentateurs de l'Acte uniforme précisent que « l'acceptation n'est pas pure et simple, elle devient une contre proposition non susceptible de former un contrat. Ce texte n'indique pas quelles altérations revêtent le caractère substantiel (article 31 de la Convention de Vienne).
25. CISG Advisory Council.
26. Article 215 : « [l]e délai d'acceptation fixé par l'auteur de l'offre dans un télégramme ou une lettre commence à courir du jour de l'émission de l'offre, le cachet des Services postaux faisant foi. Le délai d'acceptation que l'auteur de l'offre fixe par téléphone, par télex, par télécopie ou par tout autre moyen de communication instantané commence à courir au moment où l'offre parvient au destinataire ». Ces observations valent aussi pour l'article 2/8 de l'Avant projet d'Acte uniforme sur le droit des contrats : article 2/8 : « [l]e délai d'acceptation fixé par l'auteur de l'offre commence à courir au moment où l'offre est expédiée. La date indiquée dans l'offre est présumée être celle de l'expédition, à moins que les circonstances n'indiquent le contraire ».

27. CISG Advisory Council.
28. Article 2/6 de l'Avant projet d'Acte uniforme sur le droit des contrats. Selon les commentaires 1 des Principes d'Unidroit sur l'article 2.1.6: « [p]our qu'il y ait acceptation, le destinataire doit indiquer d'une façon ou d'une autre son "acquiescement" à l'offre. Le seul accusé de réception de l'offre, ou l'expression d'un intérêt à son égard, n'est pas suffisant. En outre, l'acquiescement doit être sans condition, c'est-à dire qu'il ne peut dépendre d'autres mesures à prendre par l'auteur de l'offre (par exemple "Notre acceptation est subordonnée à votre approbation finale") ou le destinataire (par exemple "Nous acceptons par la présente les clauses du contrat telles qu'elles figurent dans votre convention et nous nous engageons à soumettre le contrat à notre conseil d'administration pour approbation dans les deux semaines à venir"). Enfin, la prétendue acceptation ne doit contenir aucune modification des termes de l'offre ou au moins aucune qui ne les altère substantiellement [...] ».
29. Article 2/7.
30. Commentaires et illustrations sur l'article 2.1.7 des Principes d'Unidroit.
31. Ibid.
32. Mouhamadou Sanni.Yaya. (2011) "Le Droit de l'OHADA face au commerce électronique", Thèse de doctorat effectuée en cotutelle, Faculté des études supérieures de l'Université de Montréal, Faculté Jean Monnet de droit, d'économie et de gestion de l'Université de Paris-Sud 11 p. 105.
33. Ibid.
34. Donnie Kidd, Jr. and William.Daughtrey, (2000) "Adapting Contract Law to Accommodate Electronic Contracts: Overview and Suggestions", Rutgers Computer and Technology Law Journal, 26 Rutgers Computer & Tech. L.J. 215.
35. See e.g. Department of Trans. v. Norris ,474 St. 2d 216, 218 (Ga. Ct App.1996), revised on other ground , 486 SE 2d 826 (Ga.1997)(holding that a facsimile transmission was not a "Writing" that satisfied the Statutes of Frauds). The Georgia Court of Appeal noted that "beeps and chirps along the telephone line is not a writing, in the conventional sense or a hard copy in the technical vernacular..."
36. Section 201 requires that a contract lasting more than one year or having a value of \$5,000 or more is not enforceable absent a record authenticated by the party to be charged. See UCITA 201(a)(1)(1999). The record must indicate that a contract was made and could reasonably identify the copy or subject matters to which the record itself refers.
37. Also see the definition of 'written' in the earlier Uniform Act on General Commercial Law 1997, Article 209 'writing the scope of this book, the word 'written' shall mean any communication using a written medium, including the telegram, telex, or telefax'. Note further Marcel Fontaine, "OHADA Uniform Act on Contract Law, Explanatory Notes to the preliminary Draft" <<http://www.unidroit.org/english/legalcooperation/OHADA%20act-e.pdf>> accessed 2 November 2013, para 59. Another provision of the Uniform Act Relating to General Commercial Law that stands the need of review is Article 209, which gives a rather archaic definition of the word 'writing', mentioning telex and telegram, with a daring reference to telefax. This wording will clearly have to give way to the far more modern definition contained in Article 1/10 of the preliminary draft.
38. This draft was prepared by Professor Marcel Fontaine, a member of the UNIDRIOT working Group for the preparation of the UNIDROIT Principles, premised on a request for assistance made by the OHADA Council of Ministers. The UNIDROIT Secretariat sent the parliamentary draft of the Act to the OHADA Secretariat in February 2005, together with an explanatory note also prepared by Professor Fontaine. See Marcel Fontaine, "OHADA Uniform Act on contract Law: Preliminary Draft" <<http://www.unidroit.org/english/legalcooperation/ohada.htm>> accessed 02 November 2013.
39. Djieufack Roland and Fon Fieldings, (2014) "Harmonization of Business Law

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40. Tchabo Sontang, (2014), « La Réglementation du commerce électronique dans la CEMAC, Contribution a l'émergence d'un Marché Commun Numérique », Ph.D Thesis, University of Dschang, p.357.
 41. Caprioli Eric, (2008) « Que veut dire neutralité technologique, du concept au principe générale du droit », communication a la conférence « Droit du commerce électronique, un droit différent ? » Université du Montréal.
 42. A 1997 court ruling by a Georgia Appellate court has contributed to this uncertainty. In Georgia Dept. of Transportation v. Norris, 1997. 474 S.E.2d 216 (Ga. App. 1996), reviewed on other grounds, 486 S.E.2d 826 (Ga.) the court held that filing a notice by fax did not satisfy a requirement that notice be in writing because the transmission of —beeps and chirps along a telephone line is not writing in the customary sense of the term.
 43. [1987] 3 Nigeria Weekly Law Reports 84 (part 59).
 44. [2001] 16 NWLR 510 (part 740).
 45. S. 97.
 46. Sellamvip.com.
 47. Caprioli Eric and SORIEUL Renaud, (1997) « Le commerce international électronique: vers l'émergence de règles juridiques transnationales », Journal de Droit International 2-323.
 48. See Article 10 of Law No. 2010/021 of 21 December 2010 on Electronic Commerce (Sale of Land, Tenement, Contracts which the law requires the intervention of the courts or public authorities, Contracts from family law and succession law issues).
 49. Ibid.
 50. Article 11 (1) imposes through electronic means should be accompanied by contractual conditions or general permitting the traceability of contract intended. Obligation of information is reiterated in Article 11 (2).
 51. Davidson Alan, (2009) The Law of Electronic Commerce, Cambridge University Press, p 37.
 52. Article 22 (2), of Prime Ministerial Decree no.2011/1521 fixing the modalities for the application of Law No. 2010/021 of 21 December 2010.
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 55. Ian Lloyd, (1997) “Legal Barriers to Electronic Contracts: Formal Requirements and Digital Signatures”, Law & the Internet regulating cyberspace, edited by Lilian Edwards and Charlotte Waelde, ‘HART’ publishing, Oxford, 140.
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 57. Goodman v. Eban (J) LTD; CA 1954 [1954] 1 All ER 763.
 58. Ian (L.) supra at 140-141.
 59. Amadou Monkaree, Lecture Notes on New Information Technology Law and Electronic Commerce, Masters I, Faculty of Law and Political Science, University of Dschang 2013/2014, unpublished.
 60. Section 2 para 20. This definition is also provided for by Section 4(68) of Law No. 2010/012 of 21 December 2010 relating to cyber security and criminality in Cameroon.
 61. Section 2 para 19.
 62. The Model Law was approved by the UNCITRAL Working Group on Electronic Commerce at its Thirty-Seventh Session, held at Vienna from 18 to 29 September 2000. It took effect in 2001.
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 64. A concise, step-by-step explanation of how digital signature technology works is available in James Hill, Lock and Load, BUS L. TODAY, Nov- Dec 1998, at 8. See also Charles (R.M.), “Proof of Who,

- What and When in Electronic Commerce Under the Digital Signature Guidelines”, 129, 135-37 (PLI Pat., Copyrights, Trademarks, & Literacy Prop. Course Handbook Series No G0-000E 1998) (explanation and examples of how digital signature technology works); Don Clark, Overcoming the Hurdles; Virtual Safety, WALL ST.J; June 1996 at R21 (brief explanation of public-key encryption).
65. See *ibid*.
66. Section 21 of Law No. 2010/012 of 21 December 2010 relating to cyber security and criminality in Cameroon.
67. Section 17 of Law No. 2010/012 of 21 December 2010 relating to cyber security and criminality in Cameroon.
68. Section 18.
69. Gatsi Jean., (2008) " Pratique des baux commerciaux dans l'espace OHADA ", 2eme edition, PUL, p. 206.
70. See Rome Convention dealing with the law applicable to contractual obligations.
71. Official Guide of the Enactment of UNCITRAL Model Law on Electronic Commerce.
72. Article 35 (1) (2), Law no.2010/021 of 21 December 2010.
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Cite this Article

Ngwa Shu Princewill. A Reflection on Contract Formation in an Electronic Commercial Transaction in Cameroon *National Journal of Cyber Security Law*. 2020; 3(2): 12–24p.