IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 150

Originating Claim No 383 of 2023

Between

Straco Leisure Pte. Ltd.

… *Claimant*

And

Sumitomo (Shi) Cyclo Drive
Asia Pacific Pte. Ltd.

… *Defendant*

JUDGMENT

[Civil Procedure — Trial — Preliminary issues]
[Contract — Contractual terms — Whether repair works carried out by the defendant were within the contracted scope of works and done with the claimant's knowledge and authorisation]
[Contract — Contractual terms — Whether defendant's standard terms and conditions were incorporated into the contract by virtue of prior course of dealing with claimant]

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Straco Leisure Pte Ltd
v
Sumitomo (Shi) Cyclo Drive Asia Pacific Pte Ltd

[2025] SGHC 150

General Division of the High Court — Originating Claim No 383 of 2023
S Mohan J
26–27 February, 5 May 2025

5 August 2025 Judgment reserved.

S Mohan J:

Introduction

1 The "Singapore Flyer" is a Giant Observation Wheel (the "GOW") located along Raffles Avenue. It has been a prominent, and some might say iconic, feature of the Singapore skyline since its opening in 2008. In January 2018, a serious breakdown of the GOW occurred, which spawned the present dispute. The breakdown resulted in the GOW suspending operations for approximately two months, with full operational capacity not resuming until a year later. The claimant blames the defendant for the breakdown occurring and seeks to make the defendant liable for the substantial losses the claimant says it incurred as a result.

2 This judgment concerns two issues, set out below at [37], that I ordered to be tried first as preliminary issues. Both parties accepted, and I too was

satisfied, that a determination of these preliminary issues would result in significant savings in both time and costs. The first of these issues centres on the incorporation of the defendant's standard terms and conditions which, if applicable to the claimant's claim, could limit the defendant's liability (if any) to a very significant extent.

Background Facts

The GOW

3 The GOW was designed and manufactured by Mitsubishi Heavy Industries Ltd.[1] Its rotational movement is provided by 12 "Drive Modules" distributed along the circumference of the wheel, respectively labelled: "DN1", "DN2", "DN3", "DS1", "DS2", "DS3", "DE1", "DE2", "DE3", "DW1", "DW2", and "DW3".[2] As the labels suggest, they correspond to the four cardinal points (North, South, East, and West).[3] An illustration of DW1, DW2, and DW3 (highlighted) is provided in Figure 1 below for reference:[4]

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1 Statement of Claim filed 13 June 2023 ("SOC") at para 3; Defence (Amendment No. 1) filed 23 July 2024 ("Defence (A1)") at para 4.

2 Envista, "Failure Analysis Report" dated 24 April 2018 at para 3.3.1 (ABOD 631).

3 Transcript of 26 February 2025 at p 30, lines 11–16.

4 Exhibit C1, p 5.

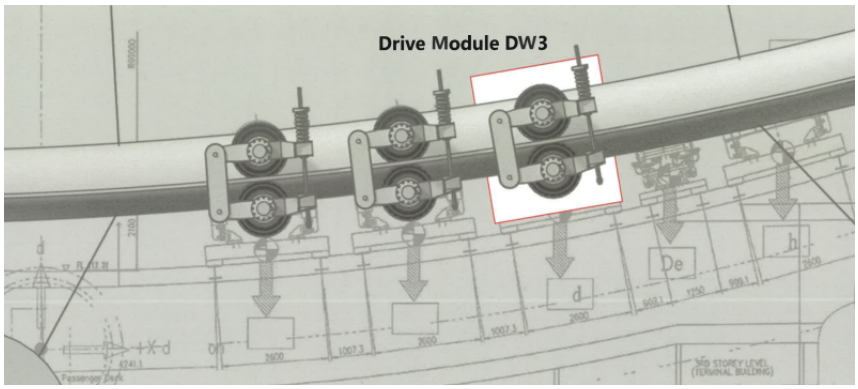

Figure 1

4 Each Drive Module consists of an upper and lower "Drive Wheel" – thus, with two Drive Wheels for each of the 12 Drive Modules, there are a total of 24 Drive Wheels. The Drive Wheels rotate along the drive track, thereby providing the GOW's rotational movement. Figure 2 below depicts a diagrammatic representation of each Drive Wheel:[5]

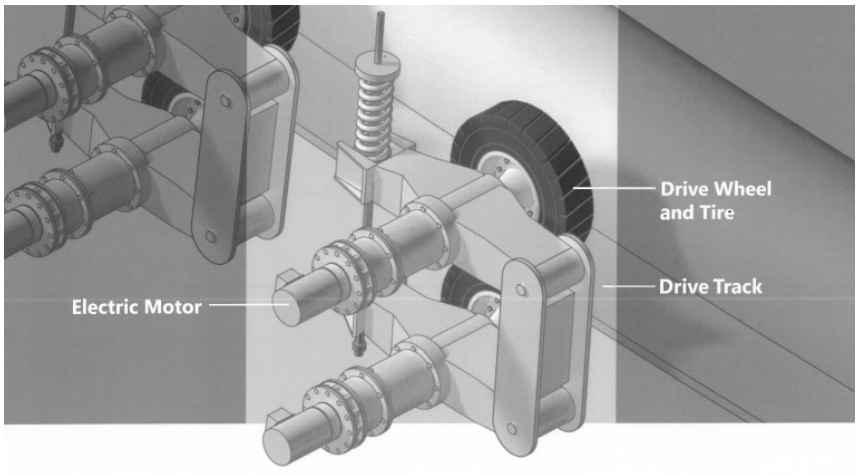

Figure 2

[5] Exhibit C1, p 7.

5 In turn, and as shown in Figure 3 below, each Drive Wheel is connected to the GOW by a "Drive Shaft":[6]

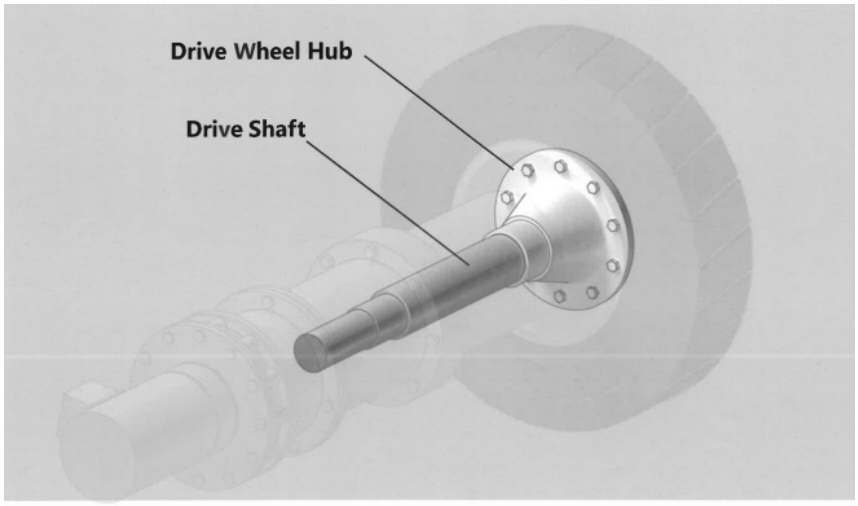

Figure 3

6 To assist the reader, I will adopt the following naming convention in this judgment: for example, the Drive Shaft affixed to the upper Drive Wheel of the DW3 Drive Module will be referred to as the "DW3 Upper Drive Shaft" (or "DW3 Upper" in short), the Drive Shaft affixed to the lower Drive Wheel of the DE2 Drive Module will be referred to as the "DE2 Lower Drive Shaft" (or "DE2 Lower" in short), and so on.

The parties

7 The claimant is Straco Leisure Pte. Ltd. – it was at all material times the owner and operator of the GOW. I heard evidence from two of the claimant's witnesses:

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[6] Exhibit C1, p 11.

(a) Leung Kwok Ho Ringo ("Mr Ringo Leung"), the claimant's General Manager;[7] and

(b) Loke YunXiang Stanley ("Mr Stanley Loke"), the claimant's Maintenance Manager.[8]

8 Paul Raymond Fitzpatrick ("Mr Fitzpatrick") is another employee who was slated to give evidence for the claimant, but he was unable to make it for the trial due to a personal familial matter.[9] Counsel for the claimant, Mr Raymond Wong ("Mr Wong"), was content to proceed with the preliminary trial without Mr Fitzpatrick's evidence, and Mr Lim Yee Ming, counsel for the defendant, did not object to this course of action.[10] In the circumstances, I granted the claimant's application, made at the start of the trial, for leave to withdraw Mr Fitzpatrick's affidavit of evidence-in-chief ("AEIC").[11] The result is that Mr Fitzpatrick's AEIC was not admitted into evidence, and I have not considered it in my determination of the preliminary issues.

9 The defendant, Sumitomo (Shi) Cyclo Drive Asia Pacific Pte. Ltd., is a subsidiary of Sumitomo Heavy Industries Ltd.[12] Three witnesses were called by the defendant:

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7 AEIC of Leung Kwok Ho Ringo filed 12 July 2024 ("AEIC of Mr Ringo Leung") at para 1.

8 1st Affidavit of Loke Yunxiang Stanley filed 26 January 2024 ("1st Affidavit of Mr Stanley Loke") at para 1; AEIC of Loke Yunxiang Stanley filed 12 July 2024 at para 2.

9 Transcript of 26 February 2025 at p 1, lines 20–26.

10 Transcript of 26 February 2025 at p 4, lines 5–9.

11 Transcript of 26 February 2025 at p 3, line 24 to p 4, line 18.

12 Defence (A1) at para 5.

(a) Ronny Poon Foo Heng ("Mr Ronny Poon"), the defendant's Managing Director;[13]

(b) Roy Ho Teck Loon ("Mr Roy Ho"), who was an Assistant Manager with the defendant at the material time;[14] and

(c) Lim Yee Ching ("Mr Albert Lim"), who was a Service Supervisor with the defendant at the material time.[15]

The parties' business relationship

10 The defendant describes itself as a "designated vendor" of certain specific components of the GOW,[16] and who provided "maintenance and repair works" for these designated components.[17]

11 That said, it is undisputed that from time to time the claimant would engage the defendant to also carry out various *ad hoc* works for the GOW (the "Ad Hoc Works").[18] The Ad Hoc Works generally proceeded according to the following protocol (the "Protocol"); the relevant documents are in bold and are collectively referred to as the "Protocol Documents":[19]

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13 AEIC of Ronny Poon Foo Heng filed 15 July 2024 ("AEIC of Mr Ronny Poon") at para 1.

14 AEIC of Roy Ho Teck Loon filed 12 July 2024 ("AEIC of Mr Roy Ho") at paras 3–4.

15 AEIC of Lim Yee Ching filed 12 July 2024 ("AEIC of Mr Albert Lim") at paras 4–5.

16 Defence (A1) at para 5(ii).

17 Defence (A1) at para 6(ii).

18 SOC at para 6; Defence (A1) at para 6(i)–(ii).

19 AEIC of Mr Ringo Leung at para 6; AEIC of Mr Ronny Poon at paras 15.8–15.10.

(a) The claimant would contact the defendant to discuss an issue which had arisen with the GOW and which required repair/rectification work to be carried out. A **quotation** would be issued by the defendant to the claimant for the requisite works that were to be undertaken.

(b) The claimant would issue a **purchase order** to the defendant in response to the quotation. Purchase orders were generally signed by Mr Ringo Leung and one Ms Jean Pek, a finance director for the claimant.[20]

(c) The defendant would then issue an **order acknowledgement** to the claimant.

(d) Upon completion of the works or part thereof, the defendant would issue a **delivery order** to the claimant. Delivery orders were generally the only document generated by the defendant that were signed by the claimant –[21] usually by Mr Stanley Loke.[22]

(e) Lastly, the defendant would issue a **tax invoice** to the claimant.

12 Out of the four documents issued by the defendant under the Protocol, the last three in time (*ie*, the order acknowledgements, the delivery orders and the tax invoices) contained the following sentence at the foot of the document (the "Incorporation Clause"):

> *All business is undertaken in accordance with our terms and conditions*

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[20] Transcript of 26 February 2025 at p 107, lines 8–9; see for example ABOD 1343, 1360.

[21] Defendant's Closing Submissions ("DCS") dated 21 April 2025 at para 13.5.

[22] See for example ABOD 1352, 1358.

13 The defendant submits that the Incorporation Clause refers to the 2016 version of its general terms and conditions – this is a two-page set of standard terms containing 19 clauses (the "Sumitomo Standard Terms").[23] Of particular relevance to the dispute is clause 17 of the Sumitomo Standard Terms ("Clause 17"), which reads:

> **17. Limitation of Liability**
>
> Seller's liability is *limited to the price of the subject Equipment*. Seller will not be liable for, and Buyer hereby waives all claims to, any consequential, indirect, special, punitive or incidental damages under any circumstances, even if Seller is advised in advance of the possibility of such damages. The foregoing limitation and waiver applies regardless of whether such damages are sought based upon breach of contract, breach of warranty, negligence, strict liability, misrepresentation or other legal or equitable theory.
>
> [emphasis in original in bold; emphasis added in italics]

14 It is also common ground that unlike the order acknowledgements, delivery orders, and tax invoices, the defendant's *quotations* did *not* contain the Incorporation Clause (or any other similar words of incorporation). Instead, a set of basic terms and conditions were expressly set out at the end of the document (the "Quotation Express Terms"). While the terms would vary between quotations, the following is an example of the Quotation Express Terms which might typically appear:[24]

> **Terms and Conditions**
>
> | | |
> |---|---|
> | Delivery | : Job on 30th May and 8th June 2017. |
> | Delivery mode | : Land Transport. |
> | Price | : Ex-works Singapore. |
> | Payment Term | : 30 days. |

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[23] 1st Affidavit of Mr Ronny Poon filed 27 December 2023 at para 41; ABOD 1123–1124.

[24] ABOD 1371 (Ref. No: QSSC-170048).

> Currency : Singapore Dollars.
> Validity : 30 days from date hereof.
>
> [emphasis in original]

15 It bears emphasising that while the Protocol was *generally* followed, this was not always the case[25] – for example, works would sometimes commence before the exchange of documents.[26]

16 Leaving aside the question of incorporation of the Sumitomo Standard Terms, both parties accept that generally, the Protocol Documents capture the terms of the defendant's engagement by the claimant.[27] As I discuss in greater detail later in this judgment (at [96] below), the defendant relies on this "concession" from the claimant in support of its case.

Reconditioning Works on the Drive Shafts

17 Factual disputes permeate throughout this case, but what follows is an outline of the (largely) undisputed facts.

18 Sometime in or around February 2017, abnormal noises were detected emanating from the DW3 Drive Module.[28] Investigations were conducted, and it was discovered that the diameter of the DW3 Upper Drive Shaft had reduced to a level below the prescribed specifications.[29] Figure 3 (at [5] above) illustrates where the Drive Shaft for each Drive Wheel is located.

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25 1st Affidavit of Stanley Loke at para 9.

26 AEIC of Mr Ronny Poon at para 15.13.

27 SOC at para 7; Defence (A1) at para 8.

28 AEIC of Mr Albert Lim at para 12.1; Claimant's Closing Submissions dated 21 April 2025 ("CCS") at para 10.

29 SOC at para 11; Defence (A1) at para 14(x).

19 The exact contents of the discussions that followed between the parties are disputed. Mr Roy Ho and Mr Albert Lim both said that they had recommended to Mr Stanley Loke that the DW3 Upper Drive Shaft be replaced, but that the suggestion was not accepted because it would have been too expensive for the claimant.[30] Mr Stanley Loke disagreed, and could not recall Mr Roy Ho ever making such a recommendation.[31] For completeness, I note that the claimant's closing submissions appear to accept the version of events set out at paragraph 12 of Mr Albert Lim's AEIC.[32] This would include the alleged recommendation made to Mr Stanley Loke to replace the DW3 Upper Drive Shaft. That having been said, I have not given much weight to this "concession" as nothing substantive turns on whether the defendant's employees had actually made the recommendation, apart from lending credence to its version of events.

20 Regardless, it is agreed that at some point, the defendant's employees raised three possible solutions to Mr Stanley Loke to address the drive shaft tolerance issue.[33] These solutions were: (a) metal spraying; (ii) metal chroming; and (iii) re-bushing. Metal spraying and metal chroming "involve applying a layer of metal to a metal shaft to return it to its original diameter".[34] Re-bushing involves the installation of a "sleeve or collar on a metal shaft to return it to its

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30 AEIC of Mr Roy Ho at paras 13.10–13.11; AEIC of Mr Albert Lim at paras 12.9–12.10.

31 Transcript of 26 February 2025 at p 38, lines 17–18 and at p 39, lines 16–18.

32 CCS at para 10.

33 AEIC of Mr Roy Ho at para 13.12; Transcript of 26 February 2025 at p 38, lines 12–20, and p 40, lines 13–18.

34 AEIC of Mr Roy Ho at para 13.12; Transcript of 26 February 2025 at p 40, lines 19–22.

original diameter".[35] For clarity, a "sleeve" in the context of these proceedings refers to a "Speedi-sleeve" – this is an off-the-shelf product manufactured by the company "SKF", and it comes in the form of a single metal "ring" which slides onto the shaft.[36] "Collaring" work, by contrast, involves placing two semi-circular metal pieces around the shaft and welding them together.[37]

21 Mr Stanley Loke opted to perform re-bushing on the DW3 Upper Drive Shaft.[38] At trial, Mr Stanley Loke suggested that he understood that the re-bushing works would take the form of applying a *sleeve* to the shaft (as opposed to installing a *collar*).[39] The circumstances surrounding how this purported misunderstanding arose were not canvassed in detail, but the undisputed fact remains that ultimately, a *collar* was installed around and welded to the DW3 Upper Drive Shaft[40] – henceforth, the addition of a collar to a Drive Shaft will be referred to as "Reconditioning Works".[41] After the Reconditioning Works were completed, the DW3 Upper Drive Shaft was eventually reinstalled on or around 7 March 2017.[42] The DW3 Upper Drive Shaft was the first time that Reconditioning Works had been conducted on any of the Drive Shafts.[43]

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35 AEIC of Mr Roy Ho at para 13.12; Transcript of 26 February 2025 at p 40, lines 23–25.

36 Transcript of 27 February 2025 at p 35, lines 19–31.

37 Transcript of 27 February 2025 at p 36, lines 1–7.

38 AEIC of Mr Roy Ho at para 13.15; Transcript of 26 February 2025 at p 40, lines 26–27.

39 Transcript of 26 February 2025 at p 38, lines 14–15 and p 40, lines 28–29.

40 CCS at para 11.

41 Transcript of 26 February 2025 at p 44, lines 14–15.

42 AEIC of Mr Ronny Poon at para 36.

43 Transcript of 26 February 2025 at p 15, lines 20–22.

22 From March 2017 to August 2017, Reconditioning Works were also conducted on three other Drive Shafts: DS3 Lower, DN2 Upper, and DE1 Lower. Mr Stanley Loke's evidence was that he had told Mr Roy Ho to go ahead with the "*hard chroming method* instead of re-bushing from the second shaft onwards" [emphasis added].[44] I will leave my findings on this for later on in my analysis but it suffices to say at this point that it is undisputed that Reconditioning Works were *in fact* performed on these three shafts as well.

23 The following table sets out the approximate dates of the first four sets of Reconditioning Works on the Drive Shafts:[45]

Drive Shaft	**Approximate date of Reconditioning Works**
DW3 Upper	6 March 2017
DS3 Lower	20 March 2017
DN2 Upper	17 April 2017
DE1 Lower	30 May 2017

24 Protocol Documents were issued for the Reconditioning Works performed for these four Drive Shafts.[46] Mr Stanley Loke was brought through some of these documents at trial and confirmed that (at least for the DW3 Upper Drive Shaft and the DN2 Upper Drive Shaft) these were the correct documents issued for the Reconditioning Works undertaken for the relevant Drive Shafts. As an example, Mr Stanley Loke confirmed that the quotation issued in respect

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44 CCS at para 13, citing Transcript of 26 February 2025 at p 64, line 3.

45 Claimant's Closing Submissions dated 21 April 2025 ("CCS") at para 1(e); AEIC of Mr Ronny Poon at para 56.4.

46 Index to the ABOD at S/N 106–109.

of the Reconditioning Works for the DW3 Upper Drive Shaft bore reference number "QSSC-170038", and was found at page 1344 of the agreed bundle of documents ("ABOD").[47] Mr Stanley Loke was not taken to the documents pertaining to the DE1 Lower Drive Shaft. I am nonetheless prepared to accept that, subject to the qualification at [25] below, the Protocol Documents listed in the index to the ABOD are the correct documents issued for the Reconditioning Works – more so since neither party has disputed the correctness of the documents listed therein. Indeed, both parties' affidavits and submissions appear to work off the common understanding that the documents listed in the index to the ABOD accurately reflect the Protocol Documents issued for each of the Reconditioning Works.[48]

25 As for the DS3 Lower Drive Shaft, there was an evidentiary hiccup at trial relating to the correct document representing the quotation for the Reconditioning Works performed on the DS3 Lower Drive Shaft. Mr Lim Yee Ming subsequently tendered Exhibit D1, which is ostensibly the correct quotation for those works. No one from the defendant was asked to confirm this, and as no dispute was raised by Mr Wong on the document or its accuracy, I am content to accept the accuracy of Exhibit D1.

26 Based on the Protocol Documents in the ABOD and Exhibit D1, the following table summarises the relevant details of each of the Protocol Documents for the first four sets of Reconditioning Works ("PO", "OA" and "DO", stand for "Purchase Order", "Order Acknowledgement" and "Delivery Order" respectively):

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47 Transcript of 26 February 2025 at p 19, lines 6–8.

48 CCS at para 1(e), footnotes 1–4; DCS at paras 13.4–13.5, footnotes 17–18.

Drive Shaft	Document Type	Reference No.	Dated / Issued	
DW3 Upper	Quotation[49]	QSSC-170038	6 March 2017	
	PO[50]	SL/03025/2017	Dated:	9 March 2017
			Signed:	10 March 2017
			Issued:	15 March 2017
	OA[51]	SGJ3A370 00	15 March 2017	
	DO[52]	DSGJ30309	15 March 2017	
	Tax Invoice[53]	DSGJ30309	15 March 2017	
DS3 Lower	Quotation[54]	QSSC-170048	20 March 2017	
	PO[55]	SL/03046/2017	Dated:	22 March 2017
			Signed:	24 and 28 March 2017

49 ABOD Index, S/N 106; ABOD 1344; Transcript of 26 February 2025 at p 19, lines 6–8.

50 ABOD Index, S/N 106; ADOD 1343; Transcript of 26 February 2025 at p 17, lines 1–16.

51 ABOD Index, S/N 106; ABOD 1351; Transcript of 26 February 2025 at p 19, lines 15–23.

52 ABOD Index, S/N 106; ABOD 1352; Transcript of 26 February 2025 at p 19, lines 24–30.

53 ABOD Index, S/N 106; ABOD 1353; Transcript of 26 February 2025 at p 20, lines 1–4.

54 Exhibit "D1"; Transcript of 26 February 2025 at p 58, line 17 to p 60, line 31.

55 ABOD Index, S/N 107; ABOD 1354; Transcript of 26 February 2025 at p 68, lines 1–19.

			Issued:	29 March 2017
	OA[56]	SGJ3A677 00	29 March 2017	
	DO[57]	DSGJ30667	29 March 2017	
	Tax Invoice[58]	DSGJ30667	29 March 2017	
DN2 Upper	Quotation[59]	QSSC-170071	17 April 2017	
	PO[60]	SL/05/006/2017	Dated:	2 May 2017
			Signed:	3 May 2017
			Issued:	5 May 2017
	OA[61]	SGJ5A096 00	5 May 2017	
	DO[62]	DSGJ50106	5 May 2017	

56 ABOD Index, S/N 107; ABOD 1357; Transcript of 26 February 2025 at p 73, lines 3–9.

57 ABOD Index, S/N 107; ABOD 1358; Transcript of 26 February 2025 at p 73, lines 10–14.

58 ABOD Index, S/N 107; ABOD 1359.

59 ABOD Index, S/N 108; ABOD 1361; Transcript of 26 February 2025 at p 61, lines 13–15.

60 ABOD Index, S/N 108; ABOD 1360; Transcript of 26 February 2025 at p 61, lines 10–12.

61 ABOD Index, S/N 108; ABOD 1366, Transcript of 26 February 2025 at p 62, lines 26–29.

62 ABOD Index, S/N 108; ABOD 1367, Transcript of 26 February 2025 at p 63, lines 2–3.

	Tax Invoice[63]	DSGJ50106	5 May 2017	
DE1 Lower	Quotation[64]	QSSC-170048	20 March 2017	
	PO[65]	SL/06047/2017	Dated:	29 June 2017
			Signed:	29 June 2017
			Issued:	3 July 2017
	OA[66]	SGJ7A028 00	3 July 2017	
	DO[67]	DSGJ70044	4 July 2017	
	Tax Invoice[68]	DSGJ70044	4 July 2017	

27 A few points of clarification are in order here. First, it would be noted that three dates are given for each of the purchase orders above. These correspond to: (i) the date indicated on the purchase order; (ii) the date(s) on which the respective purchase order was signed by Ms Jean Pek and Mr Ringo Leung; and (iii) the date on which the purchase order was actually issued – the date of issue is obtained by referring to the corresponding order acknowledgement, which indicates a "P/O date" at the top right hand corner of the document. An example is shown in Figure 4 below, which is an extract of

63 ABOD Index, S/N 108; ABOD 1368, Transcript of 26 February 2025 at p 63, lines 16–20.

64 ABOD Index, SN 109; ABOD 1370 / 1371.

65 ABOD Index, SN 109; ABOD 1369.

66 ABOD Index, SN 109; ABOD 1377.

67 ABOD Index, SN 109; ABOD 1378.

68 ABOD Index, SN 109; ABOD 1379.

the order acknowledgement issued for the Reconditioning Works performed on the DW3 Upper Drive Shaft (the "P/O date" is highlighted in yellow):[69]

<< ORDER ACKNOWLEDGEMENT >>

Document ID	:	SGJ3A370 00
Order Type	:	REGULAR
Customer P/O	:	SL/03025/2017
P/O date	:	15/03/2017
Account	:	S/Z911
Issued	:	15/03/2017
Your contact	:	MS LINDA
Tel	:	
Sales office	:	MR CHENG
Tel	:	

Figure 4

28 Second, it would be apparent from the table at [26] that the quotations for the DS3 Lower and DE1 Lower Reconditioning Works have the same reference number of "QSSC-170048". This is because the quotation for DE1 Lower had been mixed up with the quotation for DS3 Lower in the evidentiary hiccup I had alluded to earlier (see above at [25]).[70] Nevertheless, I do not think this raises any concerns. While the reference numbers and dates of the two quotations are identical, their contents, including the final sums quoted, are not.[71] As neither party has raised any issue with the state of the documents, I need not say any more on it.

29 Lastly and most importantly, Mr Stanley Loke confirmed at trial that the Reconditioning Works for the DW3 Upper Drive Shaft were referred to in the Protocol Documents by the following description (or a description in similar terms): "Repair shaft assembly for worn bearing seating" (henceforth, the

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69 ABOD 1351.

70 Transcript of 26 February 2025 at p 59, lines 12–17, referring to ABOD 1371.

71 Transcript of 26 February 2025 at p 59, line 18 to p 60, line 31.

"Repair Shaft Description").[72] There was no dispute that this same Repair Shaft Description (or a description in substantially similar terms) appears in all the Protocol Documents for the other three Drive Shafts which underwent Reconditioning Works.

The DW3 Lower Drive Shaft

30 On or around 7 August 2017, abnormal noises were heard from the DW3 Lower Drive Shaft.[73] While the exact sequence of events that followed is still somewhat hazy, what is clear is that at some point, the DW3 Upper and Lower Drive Shafts were removed together and brought back to the defendant's workshop, where the defendant was instructed to replace the bearings for the DW3 Lower Drive Shaft.[74]

31 Sometime in August 2017, the defendant also performed Reconditioning Works on the DW3 Lower Drive Shaft, *ie*, a collar was added and welded to the DW3 Lower Drive Shaft (the "DW3 Lower Reconditioning Works"). These works were performed by AMC E&T Pte Ltd ("AMC"), the defendant's sub-contractor. Crucially, the claimant alleges that it did not know of, nor did it authorise the defendant to perform the DW3 Lower Reconditioning Works. It is undisputed that the Protocol was *not* followed in respect of the said works and there is no formal contract or documentation arising from the DW3 Lower

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72 Transcript of 26 February 2025 at p 20, lines 24–31; Transcript of 26 February 2025 at p 21, lines 14–19.

73 SOC at para 14; AEIC of Mr Ronny Poon at para 48.

74 SOC at para 14; 1st Affdavit of Stanley Loke at para 10(d); AEIC of Mr Ronny Poon at paras 48 and 53.

Reconditioning Works in the record.[75] For completeness, the claimant does refer to a set of Protocol Documents issued between 16 August 2017 and 5 September 2017,[76] which it says were issued for various works done on the DW3 Lower Drive Shaft in or around that period –[77] the claimant refers to the Quotation, Purchase Order and Order Acknowledgement but I note that the record also includes the Delivery Order and Tax Invoice. Nevertheless, I understand that the parties have taken the common position that these documents do not include or make any reference to the Reconditioning Works performed on the DW3 Lower Drive Shaft, and so in that sense, they are not strictly speaking relevant here.

32 After reinstallation, abnormal noises persisted from the DW3 Lower Drive Shaft. In September and October 2017, the DW3 Lower Drive Shaft underwent a chroming process to increase its shaft tolerance from a "h6" value to a "p6" value (the "DW3 Lower Chroming").[78] The defendant contends that it had referred the claimant to its sub-contractor, Ri Jia Engineering Service Pte Ltd, for the chroming works and was subsequently not involved in those works.[79] But nothing substantive turns on this as it is not in dispute that chroming works were in fact carried out. Further troubleshooting tests were

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75 Claimant's Opening Statement dated 4 November 2024 ("COS") at para 7; AEIC of Mr Ringo Leung at para 7; AEIC of Mr Ronny Poon at para 51.

76 CCS at para 1(e), Table S/N (v), and footnote 5; ABOD 1042 (Quotation), 1044 (Purchase Order), 1046 (Order Acknowledgement), 1048 (Delivery Order), and 1049 (Tax Invoice).

77 COS at para 7.

78 SOC at para 15; Defence (A1) at para 17(viii).

79 Defence (A1) at para 17(vii)–(viii); AEIC of Mr Ronny Poon at paras 63–64.

conducted on 25 and 27 October 2017 and it appears that the problem abated as the following months passed without incident.[80]

33 On 25 January 2018, the DW3 Lower Drive Wheel broke from its shaft (the "Incident"), causing the DW3 Lower Drive Wheel to fall onto the GOW's service platform. The next day, the Building and Construction Authority issued a Notice and Direction under s 54(2) of the Amusement Rides Safety Act (Cap 6A, 2012 Rev Ed) applicable at the time, ordering the claimant to suspend operation of the GOW until further notice.[81] Operations were eventually allowed to resume at 50% capacity on 31 March 2018.[82] Full operational capacity was only restored just over a full year after the Incident, on 31 January 2019.[83]

Background to the dispute

34 Various expert reports were commissioned by the claimant and its insurer to investigate the cause(s) of the Incident. The claimant's position, arising from some of the findings in these reports, is that the Incident was caused by the DW3 Lower Reconditioning Works undertaken by the defendant.[84] Amongst other things, the claimant avers that the DW3 Lower Reconditioning Works had been performed without its knowledge and / or authorisation,[85] and that by negligently recommending an inappropriate method of repair and / or otherwise causing the Incident, the defendant had acted in breach of contract

80 Defence (A1) at para 17.

81 SOC at para 17; 3ABOD 1056.

82 3ABOD 1058–1060.

83 3ABOD 1075.

84 SOC at paras 20.

85 SOC at para 14; COS at para 14.

and / or negligently.[86] The claimant seeks special damages in excess of $380,000, and estimates that its loss of profit arising from the (full and partial) closures of the GOW is in excess of $9 million.[87]

35 Two of the defendant's arguments in response are relevant here:

(a) First, the DW3 Lower Reconditioning Works were authorised by the claimant.

(b) Second, the claimant's damages (if any) are limited to the "price of the subject Equipment" pursuant to Clause 17 of the Sumitomo Standard Terms,[88] which the defendant says have been incorporated into the parties' contractual relationship by virtue of the Incorporation Clause.[89]

36 Evidently, if the Sumitomo Standard Terms were successfully incorporated into the parties' contractual relationship, Clause 17 might have the effect of significantly limiting the claimant's recoverable damages (if any).

Issues

37 In HC/SUM 3881/2023, the defendant applied for a preliminary determination of a question of law or construction of documents. After hearing

86 SOC at para 26.

87 SOC at para 27.

88 ABOD 1123.

89 Defence (A1) at para 31.

the parties, and with their agreement, I ordered that the following two issues were to be determined by way of a preliminary trial:[90]

> (a) "[w]hether the Defendant's standard Terms and Conditions, in particular clause 17 thereof, … are incorporated into the contract entered into between the Defendant and the Claimant on or around August 2017 and are binding and applicable to the Claimant's claim against the Defendant for the alleged breach of contract in relation to the Reconditioning Works … on the DW3 Lower Drive Shaft" (the "Incorporation Issue"); and
>
> (b) "[w]hether the Reconditioning Works were part of the contracted scope of works and were undertaken with the knowledge and authorisation of the Claimant" (the "Authority Issue").

38 I will consider the Authority Issue first as it is a threshold issue – in my view, the Incorporation Issue will cease to be relevant if the DW3 Lower Reconditioning Works were not even part of the contracted scope of works in the first place.

Authority Issue

The parties' cases

39 The claimant accepts that in August 2017 the defendant was authorised to remove the DW3 Lower Drive Shaft, whereupon it was brought into the defendant's workshop for examination. It also accepts that the defendant was authorised to replace the bearings of the DW3 Lower Drive Shaft when it was

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90 HC/ORC 4577/2024 dated 8 April 2024 at para (b).

at the defendant's workshop.[91] However, it claims that the defendant went *further* to perform the DW3 Lower Reconditioning Works without the claimant's knowledge or instruction.[92] It also disclaims knowledge that AMC had been engaged to carry out the DW3 Lower Reconditioning Works.[93] The claimant says that it only became aware of the DW3 Lower Reconditioning Works *after* the Incident – in support of its case, it points to the fact that it is unable to find any Protocol Documents referencing the DW3 Lower Reconditioning Works.[94]

40 In its closing submissions, the claimant makes reference to Mr Stanley Loke's evidence that (a) when he gave approval to proceed with re-bushing of the DW3 Upper Drive Shaft, he understood that a "Speedi-sleeve" would be applied (instead of the collaring works that were eventually conducted) (above at [21]);[95] and (b) that he intended to approve hard chroming instead of re-bushing in respect of the remaining Drive Shafts (above at [22]).[96] No explicit submission is made from these two aspects of Mr Stanley Loke's evidence, but the implication appears to be that the defendant's history of not following instructions and / or acting without authorisation would lend credence to the claimant's account that the defendant had gone on a frolic of its own with respect to the DW3 Lower Reconditioning Works.

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91 SOC at para 14.

92 1st Affidavit of Mr Stanley Loke at para 6.

93 CCS at para 14.

94 AEIC of Mr Ringo Leung at para 7.

95 CCS at para 12.

96 CCS at para 13.

41 The defendant's case is that it would always obtain the claimant's approval before commencing Ad Hoc Works. It alluded to receiving documents from the claimant comprising "method statements or written instructions setting out the proper procedures and/or methodologies it requires [the defendant] to follow when conducting the Ad Hoc Works" – the defendant refers to these as "Work Instructions".[97]

42 With respect to the Reconditioning Works on the DW3 Upper Drive Shaft (which was the first shaft to undergo Reconditioning Works), Mr Roy Ho's evidence was that he had made it clear to Mr Stanley Loke that re-bushing works referred to collaring work;[98] this was because a "Speedi-sleeve" was, in his view, an untenable method.[99] Mr Roy Ho was "unable to recall or verify the exact time or method through which Stanley provided his confirmation to proceed with the re-bushing works", but he maintained that he must have obtained Mr Stanley Loke's approval because he would "not have known" which of the three solutions the claimant wished to proceed with.[100] Further, proceeding without confirmation would have resulted in the defendant incurring costs without any guarantee that the same could be recovered from the claimant.[101]

43 The defendant's evidence relating to the Reconditioning Works conducted for the remaining four Drive Shafts (including the DW3 Lower Reconditioning Works) was materially the same. Mr Roy Ho and Mr Albert Lim

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97 AEIC of Mr Roy Ho at para 9.3

98 Transcript of 27 February 2025 at p 37, lines 10–11.

99 Transcript of 27 February 2025 at p 37, lines 5–7.

100 AEIC of Mr Roy Ho at para 13.16.

101 AEIC of Mr Roy Ho at para 13.16.

were only able to say that they would not have performed any works without Mr Stanley Loke's confirmation.[102]

44 As to Mr Stanley Loke's allegation that he gave instructions to do hard chroming, the defendant submits that this allegation is not supported by the evidence.[103] The DW3 Lower Chroming (see above at [32]) was the first time that the parties partook in discussions on chroming processes.[104] The extensive emails surrounding the DW3 Lower Chroming[105] suggest that if Mr Stanley Loke had indeed given instructions to do hard chroming, similar discussions would have been produced in evidence – but there is no evidence of any such discussion.[106] In any event, Mr Stanley Loke must have been aware that the Reconditioning Works were being performed.

45 The defendant points to the fact that Mr Stanley Loke accepted that the Protocol Documents referred to the Reconditioning Works using the Repair Shaft Description (see above at [29]).[107] This description was consistent across all of the first four Drive Shafts, the sole exception being the fifth and last *ie*, the DW3 Lower Reconditioning Works, for which there are no Protocol Documents available.

46 Mr Stanley Loke had sight of the Protocol Documents and it is "simply unbelievable" that he "would not have caught the fact that none of [the Protocol

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102 AEIC of Mr Roy Ho at paras 16.6–17; AEIC of Mr Albert Lim at paras 15.6–16.

103 DCS at para 33.

104 DCS at para 34.5.

105 DCS at para 34.2.

106 DCS at paras 34.6–34.7.

107 DCS at para 35.2–35.3.

Documents] ever reflect the Chroming Process he thought was being carried out on the second to fourth Collared Shafts".[108] At trial, Mr Stanley Loke was referred to a delivery order he had signed and which bore the Repair Shaft Description – his explanation is as follows:[109]

> … So when I---when I sign this DO, I've had a glimpse. And then, you know, I just sign off on the sleeve. So I didn't know what---exactly what kind of reconditioning works has undergone at that point of time. …

47 The defendant also refers to an email chain between Mr Roy Ho and Mr Stanley Loke which spans from 28 March to 29 May 2017.[110] Of particular relevance is an email from Mr Stanley Loke to Mr Roy Ho on 29 May 2017, in which Mr Stanley Loke asks Mr Roy Ho to amend a table he has attached to the email (the "29 May Table"). Mr Roy Ho replies in about ten minutes with the amended table, as shown in Figure 5 below:[111]

CHVMS5-6215DA-B-377 / Additional rework										
S/N	Drive	Equipment No	Serial no	Date	Rework Locknut thread & open M20 thread hole at cover	Rework shaft bearing seat	Rework motor bearing cover	Replace motor rotor	Replace new coupling	Rebush motor flange & Installed Additional Collar
	Lower	DE 2	C7020731 C7020749	20/12/2016	Yes	No	No	No	No	No
2	Upper	DE 3	C7019828	20/7/2016	Yes	No	No	No	No	No
	Lower		C7020752							
3	Upper	DN 3	C7019818	10/11/2016	Yes	No	No	No	No	No
	Lower		C7020743							
4	Upper	DE 1	C7020750	25/4/2017	Yes	No	Yes Upper Yes Lower	No	No	Yes
	Lower		C7020748							
5	Upper	DN 2	C7019820	12/4/2017	Yes	Yes Upper	No	Yes Upper	No	No
	Lower		C7020746							
6	Upper	DS 3	C7020741	23/3/2017	Yes	Yes Lower	Yes Upper Yes Lower	No	Yes Upper Yes Lower	No
	Lower		C7020745							
7	Upper	DW 3	C7019824	24/1/2017	Yes	Yes Upper	No	No	Yes Upper Yes Lower	Yes
	Lower		C7019826							

Figure 5

108 DCS at para 35.4.

109 Transcript of 26 February 2025 at p 73, line 31 to p 74, line 2.

110 ABOD 1176–1180.

111 ABOD 1180.

48 One of the middle columns (highlighted in yellow) is titled "Rework shaft bearing seat" (*ie*, words similar to the Repair Shaft Description). This column also accurately reflects that the Reconditioning Works had already been performed on the DN2 Upper Drive Shaft, the DS3 Lower Drive Shaft, and the DW3 Upper Drive Shaft. The DE1 Lower Drive Shaft is not reflected in this table because the Reconditioning Works were only performed on it around a day later on 30 May 2017 (see above at [23]). The defendant says that by asking Mr Roy Ho to amend this table, Mr Stanley Loke must have been familiar with its contents, and would have known that Reconditioning Works had been conducted on the three collared shafts listed there.[112]

49 Lastly, the defendant proffered an explanation for the lack of documentation surrounding the DW3 Lower Reconditioning Works: Mr Stanley Loke had allegedly mentioned on multiple occasions that the claimant was suffering from budget constraints (see above at [19]).[113] Mr Roy Ho recalled that the claimant had requested for a discount on the Ad Hoc Works relating to the DW3 Lower Drive Shaft due to these budget constraints.[114] In the circumstances, it was decided that the defendant would not charge the claimant for the DW3 Lower Reconditioning Works (the "Goodwill Discount").[115] In turn, Mr Roy Ho asked the defendant's sub-contractor AMC for a similar discount.[116] The defendant stresses that it would not have waived its charges "if there had not been a request for the same".[117]

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112 DCS at para 35.6.5.

113 AEIC of Mr Roy Ho at para 18.1.

114 AEIC of Mr Roy Ho at para 18.2.

115 AEIC of Mr Roy Ho at para 18.3.

116 AEIC of Mr Roy Ho at para 18.4.

117 DCS at para 53.

50 As evidence of these events, the defendant produced various documents it had received from AMC. The first, a quotation with reference number "AMCET/Q1892", is dated 11 August 2017 and contains four line items – the fourth item carries the Repair Shaft Description.[118] The defendant says that this refers to the DW3 Lower Reconditioning Works.[119] A second quotation was issued on 14 August 2017 under cover of an email of even date "attach[ing] revised quotation".[120] This revised quotation is identical in all respects to the original, save that it is for a lower amount because it no longer includes the fourth line item bearing the Repair Shaft Description.[121] The defendant explains that the revised quotation was sent following its request to AMC to waive the costs of the DW3 Lower Reconditioning Works.[122]

51 I was also brought to a letter from AMC to the defendant dated 21 August 2017 (the "AMC Letter"), which the defendant says was also issued following its request to discount the DW3 Lower Reconditioning Works. The AMC Letter reads:[123]

> …
>
> **RE: Good-will for shaft repair**
>
> AMC E&T Pte Ltd was tasked to carry out a dia 130mm shaft repair as per previous procedure.
>
> Understand from Sumitomo that the project is taking a toll.
>
> After discussion, as we have some material left, to show our support and enhance our long term working relation, AMC E&T

118 ABOD 1184.

119 AEIC of Mr Ronny Poon at para 51.

120 ABOD 1190.

121 ABOD 1191.

122 AEIC of Mr Ronny Poon at para 52.

123 ABOD 1192.

> Pte Ltd will carry out this repair job, out of good will, without charges.
>
> Yours Sincerely
>
> …

52 Somewhat curiously, despite the documentation from AMC evidencing the discount AMC had provided the defendant, the defendant was unable to provide any contemporaneous documents issued by *itself or the claimant* evidencing the Goodwill Discount.

Analysis and decision on the Authority Issue

53 As should have become apparent from the preceding discussion, the evidence in this case has been far from satisfactory. The defendant alluded to receiving "Work Instructions" (as defined above at [41]), but of the five occasions on which Reconditioning Works were conducted, I only had the benefit of one example of "Work Instructions", which were purportedly issued in respect of the DW3 Upper Drive Shaft. These instructions comprise a single page drawing exhibited in both Mr Roy Ho's and Mr Albert Lim's AEICs, and which I reproduce below as Figure 6:[124]

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124 AEIC of Mr Roy Ho at para 13.9 and Tab 5; AEIC of Mr Albert Lim at para 12.8 and Tab 3.

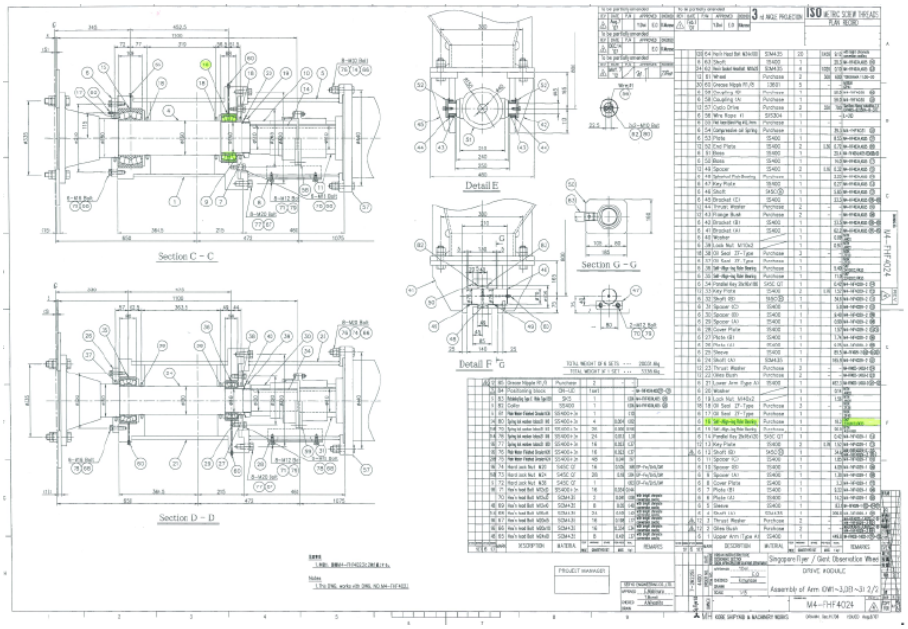

Figure 6

54 As this drawing did not, on its face, appear to include any sort of instructions from the claimant to the defendant as to the nature and scope of works the claimant wished to be carried out, I sought Mr Roy Ho's clarification at trial as to whether this drawing actually constituted the "Work Instructions" he referred to in his AEIC. Mr Roy Ho replied: "This is not the work instruction. That is more detailed. On the shaft tolerance."[125] Further attempts at clarification with Mr Roy Ho and the defendant's counsel, Mr Lim Yee Ming, were not fruitful and in the end, what Mr Roy Ho had intended "Work Instructions" to mean was still unclear with the only document in support of those "instructions" being the drawing referred to above at [53].[126] Additionally, and as I had pointed out to the defendant's counsel, it was not put to the claimant's witness Mr Stanley Loke in cross-examination that the drawing constituted the

125 Transcript of 27 February 2025 at p 48, lines 8–9.

126 Transcript of 27 February 2025 at p 48, line 10 to p 50, line 21.

instructions from the claimant's representatives on the works to be carried out to the DW3 Upper Drive Shaft.[127]

55 For completeness, the defendant has exhibited an example of "Work Instructions" purportedly provided in respect of *other* works.[128] This consisted of an email chain between the claimant and defendant's representatives. Of note is an email from Mr Stanley Loke dated 5 July 2016, in which Mr Stanley Loke informs one "Marco Wong" from the defendant that "We are fine with the proposed installation date. … Attached picture and drawings for reference".[129] The picture and drawings are affixed to the email chain and are also in the evidence.[130]

56 I find it difficult to give much (if any) weight to these "instructions" as (i) they were in respect of other works unrelated to any Reconditioning Works, and (ii) Mr Stanley Loke was not brought to these drawings or questioned on them in cross-examination. In respect of the Reconditioning Works, the only document purporting to be "Work Instructions" is the drawing at Figure 6 above. Given these circumstances, I place very little weight on the alleged "Work Instructions" referred to by the defendant in so far as Reconditioning Works were concerned.

57 With respect to the DW3 Upper Drive Shaft, Mr Roy Ho says that he took some photographs of the collaring works being conducted and had sent them to Mr Stanley Loke through the Whatsapp messaging platform.

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127 Transcript of 27 February 2025 at p 50, lines 7–12.

128 AEIC of Mr Roy Ho at para 9.3 and Tab 1 of Exhibit "RHTL–1".

129 ABOD 1139.

130 ABOD 1145–1149.

However, he is unable to produce the actual chat logs as he has since replaced his mobile phone.[131] While the photographs in question were exhibited to his AEIC, there was no way of confirming whether these had actually been sent to Mr Stanley Loke at the material time. For his part, Mr Stanley Loke could not recall having received these photographs.[132] To compound difficulties, Mr Stanley Loke had *also* changed his mobile phone and as a result, also lost all records of his Whatsapp chats.[133] In view of these difficulties, I also cannot and do not place any weight on the photographs Mr Roy Ho has exhibited to his AEIC. While they may very well prove that the defendant did conduct the Reconditioning Works on the DW3 Upper Drive Shaft, there is nothing in the photographs themselves, nor was there any other contemporaneous corroborative evidence, to suggest that these photographs were sent to Mr Stanley Loke *at the relevant time* in order to support the defendant's case that the Reconditioning Works on the DW3 Upper Drive Shaft were conducted with the claimant's knowledge and / or authorisation.

58 I turn then to the Protocol Documents exchanged between the parties in respect of the Reconditioning Works performed for the first four Drive Shafts (see above at [26]). Unlike the "Work Instructions" and Mr Roy Ho's photographs, these Protocol Documents are useful and relevant in assisting to determine the Authority Issue.

59 First, I find that Mr Stanley Loke must have known that the Reconditioning Works were being conducted on either all or at least some of

131 AEIC of Mr Roy Ho at paras 13.1 and 13.18.

132 Transcript of 26 February 2025 at p 45, lines 30–32.

133 Transcript of 26 February 2025 at p 49, lines 5–20.

the first four Drive Shafts. In this regard, I reject his evidence that he had expected a "Speedi-sleeve" to be installed for the first Drive Shaft (see above at [21]), and that he had expected only hard chroming to be performed from the second shaft onwards (see above at [22]). It is in my view significant that (i) delivery orders bearing the Repair Shaft Description were issued in respect of all four Drive Shafts with no mention of chroming, and (ii) three of the four delivery orders were signed by Mr Stanley Loke (the delivery order for the DE1 Lower Drive Shaft Reconditioning Works was signed by Mr Fitzpatrick)[134] (see above at [11]). I accept that Mr Stanley Loke may not have paid much attention to what he was signing (see above at [46]), but I find it implausible that he would not have known that collaring works had been performed on *any* one or more of the first four Drive Shafts which had undergone Reconditioning Works over a period of months, and in spite of the fact that all the delivery orders carried the Repair Shaft Description. In particular, I observe that the Repair Shaft Description contained in the order acknowledgement, delivery order, and tax invoice issued for the DS3 Lower Reconditioning Works is worded in a slightly more descriptive manner than the Protocol Documents issued for the other Reconditioning Works. Item 1 in these three documents reads: "to machine sleeve *and weld* at worn area" [capitalisation removed; emphasis added in italics].[135] Welding is required for Reconditioning Works, but *not* for the installation of a "Speedi-sleeve" (see above at [20]). I would also highlight that Mr Stanley Loke signed the delivery order for the DS3 Lower Reconditioning Works. This is a further clue that Mr Stanley Loke must have been aware that the Reconditioning Works were being performed on the first four shafts. At the very least, the fact that the Protocol Documents for all four shafts had the same

134 ABOD 1378.

135 ABOD 1357–1359.

Repair Shaft Description should have put Mr Stanley Loke on notice, at least from the second set of Protocol Documents onwards, that something was amiss if he was indeed under the impression that a different methodology (*ie*, hard chroming) was to be applied after the first set of Reconditioning Works.

60 I also agree with the defendant that further support comes from Mr Stanley Loke's request to Mr Roy Ho to fill in the relevant details in the 29 May Table. In order to maintain the view that the Reconditioning Works had been conducted without Mr Stanely Loke's knowledge, this was yet another document which he must have been blind to – I find this difficult to accept.

61 Further, I find that more likely than not, the defendant *did*, and at the claimant's request, offer a waiver to the claimant of the costs of the DW3 Lower Reconditioning Works. There is ample documentary evidence in the form of the revised quotation and the AMC Letter (see [50]–[51] above) which prove that the defendant had obtained a similar discount from AMC – this evidence was left largely unaddressed by the claimant. I agree with the defendant's submission that it would be inexplicable for the defendant to have gone out of its way to obtain a goodwill waiver from AMC if the defendant had not been requested to do the same by the claimant. While it is somewhat odd that there is nothing on the *defendant's* end contemporaneously recording the alleged discount given to the claimant, I am bound to decide this matter according to the best available evidence. I accordingly find that the Goodwill Discount was given by the defendant in respect of the DW3 Lower Reconditioning Works, and that it was given at the claimant's request.

62 To summarise:

(a) I find that, on the balance of probabilities, the claimant and / or Mr Stanley Loke knew that the Reconditioning Works had been conducted on the first four Drive Shafts, including the DW3 Upper Drive Shaft. Additionally, the Reconditioning Works on the first four Drive Shafts had been expressly authorised or ratified when Mr Stanley Loke / Mr Fitzpatrick signed off on the respective delivery orders.

(b) As for the fifth shaft, *ie*, the DW3 Lower Drive Shaft, I also find that the defendant did, at the claimant's request, grant the Goodwill Discount to the claimant in respect of the DW3 Lower Reconditioning Works.

(c) Taken together, I am persuaded by the defendant's evidence that it is unlikely they would have not only proceeded with the DW3 Lower Reconditioning Works, but performed those works free of charge, without the claimant's knowledge, approval and / or authorisation.

63 I am therefore of the view that the Reconditioning Works were part of the contracted scope of works for the DW3 Lower Drive Shaft although eventually, the claimant was not billed for those works. I am also of the view that it is more likely than not that the claimant knew about and / or authorised the DW3 Lower Reconditioning Works. As such, my answers to the questions raised in the Authority Issue are "Yes".

Incorporation Issue

64 Having found that the DW3 Lower Reconditioning Works did form part of the parties' contracted scope of works, the second issue concerns whether Clause 17 is part of the parties' contract for those works. This in turn depends

on whether the Sumitomo Standard Terms were successfully incorporated into the parties' contract, either by virtue of the Incorporation Clause or by some other means. For present purposes, I will refer to the contract between the claimant and defendant in respect of the DW3 Lower Reconditioning Works as the "DW3 Lower Contract".

The parties' cases

65 The DW3 Lower Contract was not signed. The defendant's case is that the Sumitomo Standard Terms were incorporated into the DW3 Lower Contract "by virtue of its past dealings" with the claimant:[136]

> (a) With the exception of the quotations (see above at [14]), the Incorporation Clause was present in all the Protocol Documents issued by the defendant to the claimant for the Reconditioning Works undertaken on the first four Drive Shafts.[137] I will refer to the defendant's documents which contain the Incorporation Clause (*ie*, the order acknowledgements, delivery orders, and tax invoices) as the "Incorporating Documents".
>
> (b) In particular, the delivery orders bearing the Incorporation Clause had been signed off by the claimant.[138] Applying the principles set out in *Press Automation Technology Pte Ltd v Trans-Link Exhibition Forwarding Pte Ltd* [2003] 1 SLR(R) 712, the defendant contends that a party who signs a document giving notice of additional terms is bound

136 DCS at para 13.

137 DCS at para 13.4.

138 DCS at para 13.7.

by those additional terms,[139] and that this was the case for the Reconditioning Works for the first four shafts. By signing on the delivery orders containing the Incorporation Clause, the claimant had agreed to be bound by the Sumitomo Standard Terms for each of the contracts arising from the first four sets of Reconditioning Works.[140] The defendant also highlights that the claimant has agreed in its pleadings that the terms of the defendant's engagement are captured in *all* the Protocol Documents (see above at [16]).[141]

(c) The first four sets of Reconditioning Works were conducted over approximately five months. This meant that the Incorporation Clause "had been repeatedly, and frequently applied to contracts for works between [the] parties".[142] In other words, there was a prior course of dealing. Further, the defendant contends that the Sumitomo Standard Terms would have been incorporated into all *other* works it had conducted for the claimant since the Incorporation Clause would also have been present in the Incorporating Documents arising from those other works – this lends further support to establishing a prior course of dealing.[143]

(d) The Sumitomo Standard Terms would have been incorporated into the DW3 Lower Contract due to this prior course of dealing, which concerned (i) works of the same nature as the first four Drive Shafts

139 DCS at para 8.

140 DCS at para 13.8

141 DCS at para 13.6.

142 DCS at para 13.8.1.

143 DCS at para 13.8.3.

which underwent Reconditioning Works, and (ii) which took place repeatedly and immediately before the DW3 Lower Contract.[144]

66 Somewhat surprisingly, the claimant does not address the defendant's submissions on incorporation by a prior course of dealing, notwithstanding that this constitutes a large plank of the defendant's case. The claimant's submissions, summarised below, only deal with the issue of whether the Incorporation Clause has been *directly* incorporated into the DW3 Lower Contract, either by way of signature or reasonable notice:

(a) Only the delivery orders had been signed by the claimant. However, as the delivery orders "were issued after the respective contracts had already been formed", the Incorporation Clause contained within them did not form part of the parties' contracts.[145]

(b) Although the claimant says that the parties "did not execute any formal contract for the Reconditioning Works", it appears to treat the set of unrelated Protocol Documents issued in or around August to September 2017 (see above at [31]) as governing the DW3 Lower Reconditioning Works.[146] On this basis, the relevant order acknowledgement had been issued on 5 September 2017 (after the DW3 Lower Reconditioning Works had commenced), and so was "not a contract document in the contract for the Reconditioning Works".[147]

144 DCS at para 13.8.2.

145 CCS at para 3.

146 COS at para 7.

147 COS at paras 7– 8.

(c) In any event, as there was no signed contract, the court needs to consider whether Clause 17 of the Sumitomo Standard Terms is so "onerous or unusual such that the Defendant ought to have brought it fairly and reasonably to the Claimant's attention".[148] The defendant should have but failed to bring Clause 17 to the claimant's attention.[149]

(d) The Sumitomo Standard Terms cannot be incorporated into the DW3 Lower Contract because the Incorporation Clause "does not convey to any third party customer like the Claimant the existence of a separate document which the Defendant is incorporating by way of reference".[150] It is "wrought with ambiguity" and does not make reference to "any specific terms and conditions".[151] Mr Ringo Leung explained in cross-examination that he understood the Incorporation Clause to be referring to the Quotation Express Terms instead of some other set of standard terms (see above at [14]).[152]

(e) Lastly, the Incorporation Clause has no legal effect because the Sumitomo Standard Terms had not been implemented at the time of the relevant contracts.[153]

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148 CCS at para 4.

149 CCS at para 6.

150 COS at para 9(a).

151 CCS at para 7.

152 CCS at para 7; Transcript of 26 February 2025 at p 111, line 28 to p 112, line 11.

153 COS at para 9(b).

Analysis and decision on the Incorporation Issue

67 As a preliminary matter, I reject the claimant's argument (above at [66(e)]) that the Sumitomo Standard Terms had not been implemented at the time. Mr Ronny Poon exhibited emails showing (i) that the Sumitomo Standard Terms had been distributed to its staff in November 2016;[154] and (ii) that the Sumitomo Standard Terms had been attached to order acknowledgements the defendant had sent to other customers and / or vendors in November 2016,[155] March 2017,[156] and June 2017.[157] This evidence was not challenged, and the claimant has not provided any evidence suggesting that the Sumitomo Standard Terms were not in operation at least from March 2017 – this being the approximate date of the first set of Reconditioning Works conducted on the DW3 Upper Drive Shaft.

68 Reverting to the analysis proper, standard terms can generally be incorporated into a contract in one of three ways (*Wartsila Singapore Pte Ltd v Lau Yew Choong and another suit* [2017] 5 SLR 268 at [105]):

> … The first is where they are expressly agreed to, for example, by being signed. The second method is by way of reasonable notice. The third method is via a course of dealing. …

69 It is undisputed that in this case, the Incorporation Clause could not have been expressly incorporated into the DW3 Lower Contract by way of signature because there were no written documents, much less any signed documents,

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154 AEIC of Mr Ronny Poon at p 771.

155 AEIC of Mr Ronny Poon at p 775.

156 AEIC of Mr Ronny Poon at p 762.

157 AEIC of Mr Ronny Poon at p 767.

expressly referring to the DW3 Lower Contract.[158] The doctrine of incorporation by reasonable notice, as set out in *Thornton v Shoe Lane Parking Ltd* [1971] 2 QB 163, is also inapplicable in this case because the lack of documentation means that there was no notice of the Incorporation Clause to speak of when it came to the DW3 Lower Contract. In this regard, the claimant's arguments at [66(b)] were unnecessary.

70 I therefore turn to consider the nub of the case surrounding the Incorporation Clause – were the Sumitomo Standard Terms incorporated into the DW3 Lower Contract by a prior course of dealing? The applicable principles on the question of incorporation by a course of dealing may be summarised as follows:

(a) The applicable test is set out in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 ("*Vinmar Overseas*"). The Court of Appeal began by endorsing at [53] the statement in *The Law of Contract* (Michael Furmston gen ed) (LexisNexis, 6th Ed, 2017) ("*Furmston*") that a term is incorporated into a contract by a course of dealings on the basis that "the circumstances are such that, at the time of contracting, both parties, as reasonable persons, would have assumed the inclusion of the [term] in the offer and acceptance" [Court of Appeal's amendment retained]. The Court of Appeal then endorsed the following statement from *Furmston* as to the applicable test (at [54]):

> [W]hether, at the time of contracting, each party as a reasonable person was entitled to infer from the past dealings and the actions and the words of the other in

158 DCS at para 13.8.

> the instant case, that the [term] [was] to be a part of the contract.
>
> [Court of Appeal's emphasis in *Vinmar Overseas* omitted, amendments retained]

(b) A "high threshold must be met" before a court will find that a party is "entitled to infer" the presence of a term from past dealings: *Vinmar Overseas* at [54].

(c) Factors relevant to the court's assessment include: "the number of previous contracts, how recent they are, whether they have a similar subject matter and whether they were made in a consistent manner": *Vinmar Overseas* at [55].

(d) It is "easier to establish incorporation by a course of dealing[s] where both parties are in business, rather than where one is a consumer": *Vinmar Overseas* at [58(a)], citing *Furmston*.

(e) A term is less likely to be incorporated if it is unusual or unreasonable: *Vinmar Overseas* at [58(b)], citing *Furmston*.

(f) The term sought to be incorporated must itself have had contractual force in the prior dealings; thus, a party cannot rely on terms found in prior non-contractual documents such as mere receipts as the terms will (like the documents they are found on) have no contractual force: *Nambu PVD Pte Ltd v UBTS Pte Ltd and another appeal* [2022] 1 SLR 391 ("*Nambu*") at [24].

71 Having regard to these principles, it is my view that the Sumitomo Standard Terms were *not* incorporated into the DW3 Lower Contract. I have come to this view for the following reasons.

72 In my judgment, a threshold obstacle that arises in relation to the defendant's case is the restriction set out in *Nambu*, which requires the term that is sought to be incorporated from the prior dealings to *also have had contractual force in those prior dealings* (see [70(f)] above). In my view, a key issue is whether the Incorporating Documents for the first four sets of Reconditioning Works (*ie*, the order acknowledgements, the delivery orders, and the tax invoices) had contractual force. This entails a consideration of whether the relevant contracts had already been concluded by the time the Incorporating Documents were issued. If so, the Incorporating Documents would have arrived post-contract and therefore, too late in time to incorporate the Sumitomo Standard Terms (including Clause 17) into any of the contracts for the first four sets of Reconditioning Works. And if that was the conclusion reached, then the case for incorporating the Sumitomo Standard Terms into the DW3 Lower Contract by a prior course of dealing would be significantly weakened as a result of the principle laid down in *Nambu*.

73 In order to answer this threshold question, it is thus necessary to first determine *when* the relevant contracts between the parties for the first four sets of Reconditioning Works were formed. In other words, when did the relevant "offer" and "acceptance" take place for those contracts and did those contracts contain the Incorporation Clause at the point when the contracts were concluded?

74 It is useful to begin this exercise with the defendant's quotations, which are chronologically the first of the Protocol Documents issued under the Protocol (see above at [11]). Two features immediately stand out:

(a) First, the defendant's quotations start with the following statement: "Thank you for your valued inquiry. We are pleased to make the following *offer*."[159] [emphasis added] This suggests that the quotation is intended to be an offer capable of being accepted by the claimant, as opposed to merely being an invitation to treat.

(b) Second, the quotations come with the Quotation Express Terms printed near the bottom of the page (see above at [14]). The quotations issued for the first four sets of Reconditioning Works all contain substantially similar Quotation Express Terms.[160] In particular, they all contain a term that the quotation will only be valid for 30 days from the date of issue. This further supports the view that the quotations were intended to be offers capable of being accepted. There would be no need to stipulate a validity period of 30 days if the quotations were not capable of giving rise to legal obligations.

75 In my view, the quotations constituted offers from the defendant, which were accepted when the claimant issued its purchase orders in response as the next set of Protocol Documents in the Protocol. In respect of the first four sets of Reconditioning Works, all the purchase orders (with the exception of the purchase order issued for the DE1 Lower Drive Shaft) shared the following

159 See for example Exhibit "D1".

160 ABOD 1344 (DW3 Upper); Exhibit D1 (DS3 Lower); ABOD 1361 (DN2 Upper); ABOD 1371 (DE1 Lower).

features: (i) they indicated the reference numbers and dates of the relevant quotations; (ii) they were issued within the validity period; and (iii) they were issued for the same amounts and quantities as set out in the corresponding quotations – in short, there was a complete meeting of the minds between the two documents:

Drive Shaft	**Quotation Details**	**Purchase Order Details**
DW3 Upper	QSSC-170038 dated 6 March 2017, for a total sum of $2,125.02.[161]	SL/03025/2017 issued 15 March 2017, for a total sum of $2,125.02.[162]
DS3 Lower	QSSC-170048 dated 20 March 2017, for a total sum of $1,598.58.[163]	SL/03046/2017 issued 29 March 2017, for a total sum of $1,598.58.[164]
DN2 Upper	QSSC-170071 dated 17 April 2017, for a total sum of $1,759.08.[165]	SL/05006/2017 issued 5 May 2017, for a total sum of $1,759.08.[166]
DE1 Lower	QSSC-170048 dated 20 March 2017, for a total sum of $2,525.20.[167]	SL/06047/2017 issued 3 July 2017, for a total sum of $2,525.20.[168]

76 The result of the foregoing analysis is that the first three Reconditioning Works contracts were concluded by the claimant's issuance of the purchase

161 ABOD 1344.

162 ABOD 1343.

163 Exhibit "D1".

164 ABOD 1354.

165 ABOD 1361.

166 ABOD 1360.

167 ABOD 1370.

168 ABOD 1369.

orders, which operated as a valid acceptance of the offers contained in the defendant's quotations. The defendant also appears to have inadvertently made this same point in its closing submissions, where it argued that:[169]

> … [the defendant] notes that upon [the claimant's] issuance of a corresponding Purchase Order … for the works set out in each SCA Quotation, the delivery and payment terms in the Quotation T&C were ***accepted*** as the terms for delivery and payment that parties were to comply with. …
>
> [emphasis added in bold and italics]

77 Accordingly, in respect of the first three Reconditioning Works contracts, the Incorporating Documents were issued *after* the purchase orders were issued. Therefore, the Incorporating Documents were not contractual documents and had no contractual effect; the same goes for the Incorporation Clause contained within them.

78 The Reconditioning Works performed on the DE1 Lower Drive Shaft are somewhat of an outlier as the purchase order was issued several months after the quotation had expired, and even after the Reconditioning Works had been completed (see above at [23]). The parties were not able to provide an explanation for this anomaly. Neither did the documents on record. In this particular instance, the proper analysis in my view would be to construe the claimant's purchase order as the offer, which was accepted by the defendant's order acknowledgement issued on 3 July 2017.[170]

79 Regardless, the point remains that for three out of the first four Reconditioning Works contracts, the Incorporation Clause only appeared in

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169 DCS at para 22.

170 ABOD 1377.

non-contractual documents, *ie*, in documents generated after the conclusion of those contracts (see above at [76]). Applying *Nambu*, the Incorporation Clause from these three occasions *cannot* be relied on to establish a prior course of dealing. If that is so, it would then appear that there is only *one* prior contract for the Reconditioning Works (*ie*, the works done on the DE1 Lower Drive Shaft) where the Incorporation Clause formed part of the *contractual* terms, and from which I could infer a course of dealing. However, this is also problematic for the defendant because a single instance is clearly insufficient to support an inference of a prior *consistent* course of dealings where the Incorporation Clause was part of the parties' contractual arrangements.

80 The defendant has also alluded to the argument that even if no prior course of dealing can be said to arise from the first four Reconditioning Works contracts, there might nevertheless still be a sufficient course of dealing if one were to also take into consideration all of the *other* Ad Hoc Works which have used the Protocol Documents (see above at [65(c)]. *Some* of these works might have seen the Incorporation Clause successfully incorporated as a contractual term. No analysis of the documents from the other Ad Hoc Works was proffered by the defendant but from my own review of the documents, I can cite, as an example, purchase order number SL/03031/2017 which was dated 13 March 2017,[171] issued on 20 March 2017 (according to the order acknowledgement),[172] and which referred to quotation number QSSC-160174 dated 20 June *2016* ("QSSC-160174").[173] This purchase order could not accept the offer contained in QSSC-160174 for two reasons: (a) first, because that quotation had long

171 ABOD 1807.

172 ABOD 1809.

173 ABOD 1808.

expired on or about 20 July 2016 (*ie*, 30 days after the date of the quotation), and (b) second, because the quotation bearing number QSSC-160174 had apparently *already* been accepted by the purchase order bearing number SL/06037/2016,[174] which also referred to QSSC-160174 but was dated and issued earlier – on 24 and 29 June 2016 respectively.[175] Instead, the proper analysis in this example is to characterise the claimant's purchase order dated 13 March 2017 as a fresh offer, which was then accepted by the defendant's order acknowledgement issued on 20 March 2017,[176] and which would thereby have successfully incorporated the Incorporation Clause contained in the order acknowledgement.

81 I have considered this possibility, but as I explain below, it does not change my analysis. The term sought to be incorporated must appear *consistently* in the parties' prior dealings: *Vinmar Overseas* at [55]. *Nambu* is binding authority in so far as I am required to ascertain if the term sought to be incorporated is, in the parties' prior course of dealings, *consistently* a *contractual* term. The concern is that "permitting non-contractual documents to give rise to a course of dealing would amount to allowing terms which have been consistently treated by parties as non-binding to take on contractual effect" [emphasis omitted]: *Nambu* at [42]. Adopting such an approach would defeat the reasonable expectations of parties, who expect that terms which have been consistently non-binding "would ***remain*** ***non****-binding* for the contract in question" [emphasis in original]: *Nambu* at [42].

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174 ABOD 1529.

175 ABOD 1529 and 1531.

176 ABOD 1809.

82 On the facts before me, I do not see how it can be said that the Incorporation Clause *consistently* appeared in the prior dealings between the parties as a *contractual* term. As I have discussed above at [74]–[75], in the general case the quotations constitute the offers which are accepted by the purchase orders – leaving the Incorporating Documents as non-contractual documents. A purchase order could only constitute an offer where (i) the quotation has already expired but the parties nevertheless proceed with the works on the basis of the defendant's order acknowledgement operating as the acceptance (and which would be one of the Incorporating Documents); (ii) where the terms of the purchase order are so materially different that it constitutes a counteroffer and which, again, is nevertheless accepted by the defendant's order acknowledgement; or (iii) where the quotation referred to in the purchase order has already been accepted before and thus, the purchase order operates as a fresh offer (see the example above at [80]). Unfortunately, apart from generalisations, the defendant has not particularised and / or identified sufficient specific transactions falling within any of the abovementioned narrow fact scenarios that could conceivably give rise to a course of dealing, let alone a consistent course of dealing. The ABOD does include Protocol Documents for other Ad Hoc Works conducted between 2016–2018.[177] But in the absence of any further assistance on this point from the defendant, it would not be appropriate for the court to take it upon itself to make the defendant's case by undertaking the exercise of gathering and identifying transactions from the trove of documents in the trial record in order to determine if a sufficient course of dealing may become apparent – particularly when no input was forthcoming from either party as to the accuracy of the documents in the ABOD and the

[177] ABOD Index at S/N 112–114.

transactions they purport to represent in so far as the other Ad Hoc Works were concerned.

83 I would add that in order to be "entitled to infer" that the Incorporation Clause was applicable and part of the DW3 Lower Contract, the defendant would have to be able to demonstrate to the court that the Incorporating Documents had contractual effect in a significant enough number of the prior transactions with the claimant, so much so that any instance(s) where the Incorporating Documents were non-contractual could clearly, and almost obviously, be characterised as an outlier. As mentioned in the preceding paragraph, the defendant has not been able to satisfy me on the evidence that this was in fact the state of affairs as far as the dealings between the claimant and the defendant were concerned.

84 Furthermore, one of the factors relevant to my consideration is the similarity of the subject matter in the prior transactions (see above at [70(c)]). On the facts before me, the most similar transactions to the DW3 Lower Contract were the Reconditioning Works undertaken on the first four shafts, of which only *one* contract incorporated the Incorporation Clause. Even if I assumed that there were a substantial number of *other* Ad Hoc Works which had successfully incorporated the Incorporation Clause, the approach adopted with respect to the Reconditioning Works would suggest that any prior course of dealing had *not* been followed by the parties when it came to the Reconditioning Works.

85 For these reasons, even if I expanded the scope of my analysis to consider other Ad Hoc Works apart from the Reconditioning Works relating to the first four Drive Shafts, the defendant is still not able to establish a sufficient

prior course of dealings to justify incorporating the Incorporation Clause, or Clause 17 of the Sumitomo Standard Terms, into the DW3 Lower Contract.

86 The preceding discussion is sufficient to dispose of the Incorporation Issue. In sum, the defendant has failed to satisfy me that the Sumitomo Standard Terms, including Clause 17 thereof, were incorporated into the DW3 Lower Contract. Accordingly, my answer to the Incorporation Issue is "No". For completeness however, I highlight a number of other difficulties with the defendant's case.

87 For one, I accept the claimant's submission (at [66(d)] above) that there was no clarity as to *which* terms and conditions the Incorporation Clause sought to incorporate. It is well established that a contractual term that is too uncertain will simply be unworkable: *Kwek Hong Lim v Kwek Sum Chuan* [2023] SGHC 67 at [87].

88 In this regard, I find the approach adopted by Justice Quentin Loh in *Global Switch (Property) Singapore Pte Ltd v Arup Singapore Pte Ltd* [2019] SGHC 122 ("*Global Switch*") to be instructive. The case concerned a dispute between "GSS", an owner / operator of data centres, and "Arup", their consultant engineers (at [1]). Arup contended that paragraph 8 of their fee proposal incorporated the "ACEA Form Contract" into the parties' contract; paragraph 8 was in the following terms (at [21]):

> …
>
> The above fee is based on the terms and conditions on the attached ACEA Form Contract with monthly invoices and payments on receipt.

89 Similar to the present case, no form was attached to the fee proposal (*Global Switch* at [21]). Despite there being "more than one type of ACEA Form Contract", no evidence was led "as to how widespread this Australian form's use was in Singapore or how the industry would have understood what the phrase 'ACEA Form Contract' meant" (*Global Switch* at [112]). Justice Loh held that it was not for the court to make a contract for the parties when a term was unclear, and in the circumstances, Arup had "not made out its case that the ACEA Short Form Contract has been incorporated into the Contract" (*Global Switch* at [113]).

90 These principles are equally applicable to the present case. To recapitulate, the Incorporation Clause stated that "[a]ll business is undertaken in accordance with our terms and conditions". It is undisputed that no terms and conditions were attached to the Protocol Documents, and it was Mr Ringo Leung's evidence that the first time the claimant had received or seen a copy of the Sumitomo Standard Terms was in March 2018, *after* the Incident had occurred.[178] Mr Ringo Leung's evidence was not challenged or countered in any way – the defendant was not able to provide evidence of even a *single instance* prior to the Incident where it had transmitted or communicated the Sumitomo Standard Terms to the claimant in some way.[179] In the absence of any evidence to counter Mr Ringo Leung's evidence, I accept the claimant's evidence that it was not aware, nor did it have a copy of, the Sumitomo Standard Terms prior to the Incident.

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178 Transcript of 26 February 2025 at p 115, lines 28–32, and p 117, lines 9–11.

179 Transcript of 27 February 2025 at p 8, lines 21–23.

91 Accordingly, I am of the view that it was reasonable for the claimant to believe that the Incorporation Clause was merely referring to the Quotation Express Terms (see above at [66(d)]). The defendant argues that the Incorporation Clause could not have been referring to the Quotation Express Terms because the "terms and conditions" mentioned in the Incorporation Clause are in lower case letters, while the Quotation Express Terms are titled, "**Terms and Conditions**", in bold initial capital letters.[180] I reject this argument as the distinction is artificial and not one which would easily come to mind for ordinary commercial parties. Reading the defendant's quotation together with the order acknowledgement, it is plausible that someone in the claimant's organisation could form the impression that the words of the Incorporation Clause in the order acknowledgement were simply reiterating the applicability of the Quotation Express Terms. My view is fortified by the fact that the Quotation Express Terms, apart from stipulating the validity period of the quotation, also contained terms such as when the works would be carried out ("Delivery") and the basis on which the works were priced ("Price") (see above at [14]).

92 The defendant also highlights that there is a box labelled "**Conditions**", in bold, at the top right-hand corner of each of the Incorporating Documents (*ie*, the order acknowledgements, delivery orders, and tax invoices) (the "Conditions"). The following example is taken from the order acknowledgement issued for the DE1 Lower Reconditioning Works:[181]

> **Conditions**
> Currency : SGD
> Payment Terms : NET 30 DAYS

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180 DCS at para 21.

181 ABOD 1377.

> Delivery condition : EXW
> Delivery Memo: : LOCAL DELIVERY
> Packing :
> Ship via : TRUCK
>
> [emphasis in original]

93 The defendant points out that the "delivery and payment terms" in the Quotation Express Terms were already recorded in the Conditions,[182] thus rendering the claimant's interpretation of the Incorporating Clause superfluous.[183]

94 While on its face, the "Conditions" appear to replicate some of the Quotation Express Terms, I do not think this detracts in any material way from the reasonableness of the claimant's position (at [64(d)]) that it understood the Incorporation Clause to refer to the Quotation Express Terms. Nor do I agree that it would render the Incorporation Clause redundant. For one, the terms found in these Conditions are not *clearly* identical – for example, it is not certain whether "EXW" under the "Delivery condition" category is meant to have the same meaning as "Ex-works Singapore" under the "Price" category in the Quotation Express Terms (see above at [14]). Further, no evidence was adduced by any party as to the exact purport of the Conditions. As for the defendant's contention that the Conditions were intended to replicate the Quotation Express Terms, there was no such evidence forthcoming from the defendant's witnesses in support of such a contention. In these circumstances, it would not be safe or proper for me to assume or infer that the Conditions merely repeated the Quotation Express Terms or that the Incorporation Clause would be rendered superfluous if the claimant's evidence (above at [66(d)] were accepted.

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182 DCS at para 22.

183 DCS at paras 23–24.

95 Thus, even if the Incorporating Documents had contractual effect and the Incorporation Clause was a term of the DW3 Lower Contract by virtue of a prior course of dealing, I would be prepared to find that the Incorporation Clause was in any case too vague and uncertain as to be capable of incorporating the Sumitomo Standard Terms into the DW3 Lower Contract. The end result would thus remain unchanged – the Sumitomo Standard Terms (including Clause 17) would not be incorporated into the DW3 Lower Contract.

96 The final section of this judgment considers the defendant's submission (above at [65(b)]) that the claimant has *conceded* that the terms of the defendant's engagement are captured by *all* the Protocol Documents (*ie*, including the Incorporating Documents and by extension, the Incorporation Clause). It is true that parties are generally bound by their pleadings, but there are a few reasons why I do not think the claimant's "concession" is fatal to its case.

97 The alleged concession arises from paragraph 7 of the claimant's Statement of Claim, which reads:

> Insofar as the terms of the Defendant's engagement to carry out the scheduled maintenance and any other repairs or ad-hoc works were in writing, they were contained in the following documents:
>
> …

The claimant then goes on to list out the Protocol Documents as the "following documents".

98 First, it is not readily apparent to me that the reference to "terms of … engagement" in paragraph 7 was intended to be a concession as to the contractual nature of the Protocol Documents, as opposed to what may be

described as loose drafting. A more generous interpretation might interpret the phrase as referring to *both* contractual and non-contractual terms; the latter might include operational and / or administrative statements as to receipt, delivery, and payment.

99 In any case, I do not think that it would be fair to strictly bind the claimant to its "concession" in this case. Pleadings serve to "ensure that each party [is] aware of the respective arguments against it and that neither [is] therefore taken by surprise": *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 at [35]. Hence, the court may sanction a departure from the pleadings "where no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court not to do so": *V* Nithia *(co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [40]. In my view, no prejudice will be caused to the defendant. The defendant addressed the issue of whether its delivery orders were contractual in nature extensively in its reply submissions.[184] Additionally, this issue simply involves a finding of fact which I had to make on the documents available before me – no further evidence or cross-examination at trial would have assisted the defendant on this issue, even if it had been given the opportunity to do so.

100 I would end by noting that even if the claimant is held to its "concession" in its pleadings, there would still be no difference in outcome on the Incorporation Issue. This is because I have found above (at [95]) that even if the Incorporation Clause was a term of the DW3 Lower Contract, it was too vague

[184] Defendant's Reply Submissions dated 5 May 2025 at para 7.

and uncertain to have any effect and accordingly, would not have incorporated the Sumitomo Standard Terms in any event.

Conclusion

101 For the foregoing reasons, my decision on the two preliminary issues is as follows:

(a) On the Authority Issue, the Reconditioning Works on the DW3 Lower Drive Shaft were part of the contracted scope of works and were undertaken with the knowledge and authorisation of the claimant; and

(b) On the Incorporation Issue, the defendant's standard Terms and Conditions (*ie*, the Sumitomo Standard Terms) were not incorporated into the contract entered into between the defendant and the claimant on or around August 2017 and are not binding and applicable to the claimant's claim against the defendant for the alleged breach of contract in relation to the Reconditioning Works on the DW3 Lower Drive Shaft.

102 I will hear the parties separately on costs.

S Mohan
Judge of the High Court

Raymond Wong (Wang Xukuan) (RWong Law Corporation) for the claimant;
Lim Yee Ming and Chan Qing Rui, Bryan (Chen Qingrui) (Kelvin Chia Partnership) for the defendant.
