

Standard Terms and  
Conditions referred  
to in Non-  
contractual  
Documents Have no  
Contractual Force

*Nambu PVD Pte Ltd v UBTS  
Pte Ltd and another appeal*  
[2021] SGCA 98

22 October 2021

LEGAL  
UPDATE

# In this Update

The Court of Appeal held in *Nambu PVD Pte Ltd v UBTS Pte Ltd and another appeal* [2021] SGCA 98 that a reference to terms and conditions in non-contractual documents (in this case, invoices and delivery orders) have no contractual force.

This update discusses the Court of Appeal's reasons for coming to this decision.

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## INTRODUCTION

To limit its liability for its negligence, UBTS Pte Ltd (“**UBTS**”) sought to incorporate a third party’s standard terms and conditions (which contained clauses limiting liability) into a contract it entered into with Nambu PVD Pte Ltd (“**Nambu**”).

The Court of Appeal held in *Nambu PVD Pte Ltd v UBTS Pte Ltd and another appeal* [2021] SGCA 98 that a reference to terms and conditions in non-contractual documents (in this case, invoices and delivery orders) have no contractual force.

This update discusses the Court of Appeal’s reasons for coming to this decision.

## BACKGROUND

Nambu and UBTS entered into a contract (“**Contract**”) for UBTS to transport a machine. During the transportation, the Machine caught fire. Nambu sued UBTS for damage caused by the fire to the Machine.

## THE HIGH COURT’S DECISION

The High Court held that the fire was caused by UBTS’s negligence, and also held that UBTS could not rely on its own standard terms and conditions (“**UBTS T&Cs**”) of the Singapore Logistics Association’s standard terms and conditions (“**SLA T&Cs**”) to limit its liability as neither set of terms was incorporated into the Contract.

Nambu appealed in respect of the quantum of damages and costs awarded to it. UBTS appealed the High Court’s finding that the SLA T&Cs were not incorporated into the Contract. This update will focus solely on the UBTS appeal.

## THE COURT OF APPEAL’S DECISION

The Court of Appeal dismissed the UBTS appeal.

Before the Court of Appeal, UBTS advanced the argument that the SLA T&Cs were incorporated into the Contract by virtue of either reasonable notice or by course of dealing as the SLA T&Cs were referenced in invoices and delivery orders issued by UBTS for the Contract as well as work done prior and unrelated to the Contract.

The Court of Appeal disagreed with UBTS. On the facts of the case, the Court of Appeal noted that the delivery orders and invoices were not meant to have contractual effect.

There was no reasonable notice to permit incorporation of the SLA T&Cs as the invoices and delivery orders were issued after the Contract was entered into.

The Court of Appeal further held that in general, if it can be proven that the document containing the particular term sought to be incorporated into the contract is intended merely as a receipt and not as a contractual document as such, that term will not be incorporated into the contract.

## KEYPOINT

*As a matter of both principle and authority, non-contractual documents cannot give rise to a course of dealing from which contractual terms may be incorporated. Terms sought to be incorporated must possess the requisite contractual force.*

The Court of Appeal also clarified that, as a matter of both principle and authority, non-contractual documents cannot give rise to a course of dealing such as to justify the incorporation of the terms in those documents. This rule has the benefits of avoiding unnecessary litigation, while promoting greater certainty between the contracting parties. If the delivery orders and invoices were not binding for the very contracts for which they were issued, there was no reason for Nambu to expect these delivery orders and invoices to be binding for the Contract

## COMMENTARY

This decision serves as a cautionary reminder that standard terms and conditions (“**T&Cs**”) ought to be expressly and properly referenced in contracts in order to have contractual force. As this case demonstrates, a mere reference to T&Cs in documents such as invoices and delivery orders will not be sufficient if such documents do not have contractual effect. While such T&Cs may, in certain situations, be incorporated where there has been a previous course of dealing, established trade practice, or a mutual intent to supplement a bare agreement with more detailed terms, these always depend on the specific facts of each case. When in doubt, legal advice should be sought to ensure that T&Cs are properly incorporated and legally enforceable.

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