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"We could only hold that the parties concluded a contract on the basis of the terms [indicated] in the telefax of 3 July 1997 if we deemed that the lack of reaction of the shipowner's agent to that telefax mean that he agreed to a modification of the contract. This is not the case here. Silence does not in principle equal acceptance of an offer, also in transactions between merchants. Silence is in principle not a declaration of intent; rather, it is the contrary thereof. This is true in particular where [as here] a different, detailed agreement was concluded immediately before the request of modification. A further element against finding that the silence of the shipowner's agent meant an acceptance of the offer to modify the contract is that the character's agent expressly asked for confirmation of the terms, that is of the modification of the terms, at the end of his telefax of 3 July 1997.

By way of exception, silence can be deemed to have the effect of a declaration of intent when the party remaining silent was under the obligation to express a contrary intention. However, according to jurisprudence on commercial confirmations of order, this [principle] does not apply when the offer is explicitly accompanied by a request to confirm acceptance.

Referring Principles:
IV.2.2 - Silence by offeree