

NOTE
ON THE PAYMENT MADE TO THE FURUKAWA ELECTRIC CO. LTD.

1. – The price of the goods supplied has been fixed as follows:
a) “in local currency” (ticals);
b) The said local currency is based upon an exchange of tical 1.00 – Sh. 1/9 13/32 “and any fluctuations in this exchange will alter the Ticals prices quoted in the same proportion”.

2. – The parties have agreed upon the above price and conditions :
The Furukawa Electric Co. because the said price and conditions are exnotly those proposed by them in the tenderletter dated 29th. July 1931;

The Post and Telegrahp Department because in their letter of acceptance dated 10th. August 1931 they admit the local currency and have made no reservation as to the conditions concerning calculation of the local currency as it was stated in the offer of the other party.

(An acceptance by the offerse must be understood as an acceptance of all the conditions made by the offerse unless there are restrictions or modifications specifically mentioned by the offerse in his acceptance).

3. – Consequently, both parties are bound by the provision concerning the prices, currency and fluctuation which is in the letter of the Furukawa Electric Co. dated 29th. July 1931.

4. – The condition concerning the fluctuations, as it has been spontaneously proposed by the Furukawa Electric Co. themselves, is that “any fluctuations in this exchange will alter the Ticals price quoted in the same proportion”. It is only fair to admit that the provision as it is, as soon as accepted by the offerse, is for the benefit of both parties, and it has certainly been accepted by the Post and Telegrahp Department in that spirit. In other words, “any fluctuations” means either increases or decrease of the rate of the Tical as well, and it was the risk of each party, as well as his chance, to have the fluctuation against him or in his favour. By the acceptance of the Department, such a clause has become bi-lateral, and should not be constructed in favour of one party only since there is nothing in the contract to specify it.

5. – Now the Furukawa Electric Co. or their agent states (leter 6th. January 1932) that the provision concerning the fluctuations of the baht was to apply only “between the date of the submission of our tender and the date on which your Department would accept same”. This sentence is quite clear. Unfortunately, it is not in a letter made after the contract, but in the contract itself, that the said sentence should appear in order to have efficiency. And nothing in the contract shows such a restrictive construction of the provision on fluctuations. Is it a commercial practice which permits to restrict the provision on fluctuations to the peried before acceptance only? This may be the object of an enquiry made amongst traders in Siamese and Japanese market but such a mercantils customs, if any, should be very strong indeed and supported by unquestionable precedents in order to destroy the legal effect of the absence of any apacific condition (as to the duration of the clause) in the contract itself.

6. – The contention that the provision concerning fluctuations only for the period before acceptance by the Department, appears contradictory to the

following sentence quoted from the original offer itself : “all prices in this tender are in local currency and include customs duty and all local landing and transportation chargee into your sodown”. This makes clear that the calculations of the Furukawa Co. as they appear in the tender, and all accessory conditions concerning such calculations, did extend, in the mind of the offerer, up to the time of the delivery of goods itself.

7. – As to the fact that the Siamese Government, in its acceptance, has specified that payment should be made “one month after delivery, etc.”, it is entirely agreed with the Acting Director-General of Posts and Telegraphs Department (letter 2nd. January 1932) that this is confined to the time of payment only. Nothing in the wording of the acceptance permits to link the condition of time to the condition of the rate of currency, which is quite a separate matter, and remains governed by the provision concerning fluctuations.

8. – As to the statement which is the letter of the Siam Electric Corporation Ltd. dated 24th. December 1931, that the provisions concerning payment made in the offer and having become a clause of the bilateral contract, are “without any reservation as to exchange”, it is really difficult to realize the value of such a statement when reading the plain wording of the clause on fluctuations of exchange itself.

(Sd.) R. Guyon.
2nd. December 1932