

## For the following firms:

**Schunk Kohlenstofftechnik GmbH**  
**Schunk Modultechnik GmbH**  
**Schunk Ingenieurkeramik GmbH**  
**Schunk Bahn- und Industrietechnik GmbH, Wetttemberg**  
**Schunk Bahn- und Industrietechnik GmbH, Salzburg**

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The following terms and conditions shall apply only to persons, who when entering this agreement, are acting within the scope of their commercial activities, either as commissioned agents of their respective enterprises or as self employed businesspeople, as well as to legal persons under public law and to public and/or government-owned enterprises.

### **1. Applicable Conditions**

All of our deliveries and performances are subject to these conditions as well as to any other contractual agreements which may have been entered into. The purchasing conditions of the buyer shall not be included in this agreement and the acceptance of orders shall not imply such inclusion.

### **2. Offers**

Our offers are subject to change without notice, unless explicitly stated otherwise in writing.

### **3. Subject Matter and Scope of Agreement**

3.1 Our written order confirmation shall be decisive for determining the extent of our delivery obligations, or, in the event of a firm offer made by us, if a timely order confirmation has not been made, then shall such firm offer upon binding acceptance be decisive for the determination of the extent of our delivery obligations. Ancillary agreements and alterations must be made in writing.

3.2 Our product information and descriptive material such as illustrations, drawings sketches and measurement descriptions shall not become subject matter of the agreement and are only approximately decisive, unless we have explicitly designated them as binding.

If changes are made to products after submission of an offer as a result of continual technical development, then we shall have the right to deliver the technically modified versions of such products. In doing so, we are entitled to deviations from illustrations, drawings, descriptions color, and measurement, weight, quality and other specifications, as long as these are reasonably compatible with the mutual interests of the buyer. It is the obligation of the buyer to inform us when submitting an order, if we may by no means deviate from given specifications.

3.3 Our specifications shall only apply if we expressly designate them as such in the order confirmation.

3.4 Any authorization/approval which may be necessary for the export and the use of the products to be delivered is to be obtained by the buyer at his own expense. If

we assist the buyer in any such endeavors then, he is to reimburse us for any expenses which we incur.

3.5 The buyer shall provide at his expense any media which may be necessary for the assembly and use of the products we are to deliver, in a sufficient quantity and in a non-corrosive form.

3.6 In the event that software is included in our delivery, we shall grant the user a non-exclusive right to use such software, including the corresponding documentation. The software is furnished for the purpose of being used on the on the delivery item for which it was intended. Use of the software on more than one system is not permitted.

The buyer is only authorized to copy, revise, translate or convert the software from object code to source code to the extent permitted by law (see §§ 96 a ff German Copyright Act). The buyer undertakes not to remove or alter any printed manufacturer specifications - in particular copyright information - without previously having our express consent. The buyer is authorized to make two back-up copies.

All other rights to the software and the documentation shall remain in our possession or in the possession of the software supplier. Sublicensing is not permitted.

#### **4. Limiting Condition of Export Authorization / Check of Sanction Register**

In the event that we are to make a delivery abroad, then the offer and order confirmation can only be made subject to the condition precedent, that any export authorization which may be required is granted by the appropriate authorities.

Deliveries and Services to Customers, who are named on national or international Sanction Registers, will not be executed in general.

#### **5. Copyright, Confidentiality**

We reserve and retain all copyright and property rights to samples, cost estimates, drawings, models, templates and similar information, whether of physical or nonphysical nature including information in electrical form, and access to such information is not to be granted to third parties. Copies or other duplicates may only be made for the agreed purpose. Neither originals nor duplicates may be handed over to third parties or made available in any other way.

We undertake to grant access to third parties to material which the buyer has designated as confidential, only with the buyer's consent.

#### **6. Prices**

Unless otherwise stated, prices shall be understood to be ex-works, inclusive of loading but exclusive of packaging and other costs. If applicable, sales tax/value added tax is to be added to our prices at the respective legally prescribed rate.

For performance which is to be completed later than four months after signing the contract, we shall be entitled to charge an appropriate overhead rate on our invoices for wage or material price increases which may have occurred.

#### **7. Payment, Late Payment, Withholding of Payment, Withdrawal**

7.1 Unless otherwise specified, net payment is to be made without deduction and free of charge at our stated payment office, immediately upon receipt of invoice.

7.2 We are in no way obligated to accept bills of exchange. Any bill charges which may arise are to be born by the buyer. If a bill is not honored, then all of our accounts receivable with the buyer shall immediately become due.

7.3 In the event of late payment, we shall be entitled to charge penalty interest at the level of 8 percentage points above the respective base interest rate. This shall by no means relieve the buyer of the burden of providing evidence of extraordinary financial distress.

7.4 We shall be entitled to charge EUR 10.- for every payment reminder we write.

7.5 The buyer is not entitled to withhold payment or to offset such payment due to counterclaims which are disputed by us.

7.6 If, after entering the agreement, it becomes evident that our right to receive payment is in jeopardy as a result of deficient solvency on the part of the buyer (§ 321 BGB), then we shall have the right to refuse performance and to set an appropriate deadline for the buyer, within which he shall either ask for advance payment for any deliveries made or provide suitable collateral security.

In the event that the buyer refuses to meet such demands or that the aforesaid deadline expires without success, then we shall be entitled to withdraw from the agreement and shall have a right to compensation for any damages we may have incurred.

## **8. Delivery Date, Delivery Deadline, Delay in Delivery.**

8.1 The delivery deadline or delivery date shall only be binding if they are designated as such in our order confirmation.

8.2 The delivery time allowed shall begin expiring no earlier than the submission of the order confirmation, not, however, prior to the receipt of any drawings which required the approval of the buyer, releases for purchasing and procurement documents and paperwork, approval and any necessary information for the carrying out of the production order, the clarification of any commercial and technical questions between the parties to the agreement as well as the fulfillment of any and all obligations by the buyer, e.g. the performance of a specified down-payment or the making of payments due from earlier deliveries.

8.3 In the event that noncompliance with the specified delivery deadline is caused by acts of God, labor disputes or other events which we are not able to influence, then the delivery deadline shall be extended by an appropriate and reasonable amount. This shall also apply when such circumstances occur at our subcontractors. We shall inform the buyer at once as to the beginning and end of such circumstances.

We shall not be held responsible for the occurrence or for the consequences of such circumstances as described above, even if these occur during an existing delivery delay.

8.4 The delivery deadline or delivery date shall be deemed to have been met, if by the expiration of such deadline, the delivery goods have left our plant or have been designated as ready for shipping. To the extent that an acceptance of the goods is to take place, then - except in cases of justified rejection of the goods - such acceptance date shall be deemed to be definitive or as the case may warrant, the notification of willingness to accept the delivery goods.

8.5 Our obligation to comply with the delivery deadline is subject to punctual and correct delivery by our own suppliers.

8.6 The buyer shall be entitled to immediately withdraw from the agreement if performance in its entirety becomes finally and conclusively impossible for us, prior to passage of risk. In addition, the buyer shall also be entitled to withdraw from the agreement if, in the course of filling an order, the fulfillment of a part of a delivery becomes impossible and the buyer has a vital interest in the refusal of the partial delivery. If this is not the case, then the buyer shall be obliged to pay the percentage of the agreement price which corresponds to the partial delivery. The same shall apply in cases of our subjective inability to perform. Otherwise point 12.2 shall apply.

8.7 In the event that we are delayed with our delivery and such delay causes damage to the buyer, then the buyer shall be entitled to a lump sum compensation for such damages suffered due to the aforesaid delay in delivery. The lump sum payment shall amount to 0.5% of the value of the part of the delivery which could not be used by the buyer on time or as stipulated by the agreement as a result of the delivery delay, per full week of delay; such payment shall however, not exceed, in total, 5% of the value of the delayed part of the delivery.

If we are delayed with our delivery - subject to legal exceptions - and the buyer grants us a reasonable extension of our delivery deadline, and we fail to comply with this deadline, then the buyer is entitled to withdraw from the agreement within the confines of applicable legal regulations.

Other rights which arise due to delay in delivery shall be determined exclusively by point 12.2 of these standard conditions.

8.8 If shipping or acceptance of the delivery goods is delayed for reasons for which the buyer is responsible, then we shall be authorized, beginning one month after notification that the goods are ready for shipment or notification of willingness to accept the delivery goods, to charge the buyer for expenses we have incurred, or for a minimum of 0.5% of the invoice amount per month. At the same time, all deliveries and performances made by us up to that point shall become due for payment.

We shall, however, after setting an appropriate deadline and after the expiration of such deadline proves fruitless, be authorized to otherwise dispose of the delivery goods and to reschedule delivery to the buyer within a new and appropriate deadline.

8.9 Over- or Under-delivery in the amount of +/- 10 % for bulk goods are permissive.

## **9. Receipt, Acceptance, Passage of Risk, Default in Acceptance**

9.1 At the very latest, risk passes to the buyer when the delivery goods leave our plant, including cases where partial deliveries are made or where we have agreed to other performances such as assuming responsibility for shipping costs or delivery and installation. To the extent that a formal acceptance is to take place, then this shall be decisive in determining the passage of risk. It must be carried out promptly on the acceptance date or if the case warrants our received notification of willingness to accept the delivery goods can serve this purpose. The buyer shall not be entitled to refuse the acceptance of the delivery goods if only minor quality deficits are found.

We are entitled to insure all deliveries against transport damage at the buyer's expense.

In the event that transport damage to a delivery is discovered upon arrival at the buyer's premises, or if such damage later becomes evident, then the buyer is to immediately demand a written explanatory report from the carrier.

9.2 If shipping and/or acceptance of the delivery goods is delayed or does not take place, due to circumstances which we cannot be responsible for, then the risk passes to the buyer as of the day of the notification of readiness to ship or of the willingness of the buyer to accept the delivery goods. We undertake to take out the insurance policy which the buyer requests at the buyer's expense.

9.3 In the event that we damage material delivered to us by the buyer or render such material unworkable, in particular in the course of carrying out processing or repair work, then we shall only be liable if the damage was caused by gross negligence, however such liability shall be restricted to an amount of 10% of the value of the processing work, provided that no legally prescribed regulations dictate unlimited liability.

9.4 We insure customers' material which is stored at our premises against fire, at our own expense. If the buyer desires any further insurance policies be taken out at his expense, then it is his obligation to requisition these in writing.

## **10. Retention of Ownership**

10.1 We reserve the right of ownership and the right of disposition to the delivery goods until such time as all payments from the supply agreement and any previous agreements have been received. This includes accounts receivable from checks and bills of exchange as well as those from current accounts. Should a liability related to payment by bill of exchange accrue to us in the course of the buyer's payment, then this shall in no way eliminate our retention to ownership before the possibility of us being invoked for the bill of exchange is excluded.

Prior to the full and complete settlement of our aforesaid accounts receivable, the buyer shall be entitled to continue using the delivered products in the proper course of his ordinary business, unless a non-assignment agreement has been entered into with third parties for accounts receivable pursuant to point 10.4 which have been assigned to us in advance. Prior to full and complete settlement, pledging and assignment as security shall be prohibited and resale shall only be permitted for resellers in the course of their usual business, under the condition that the reseller receives payment from his customer and forwards it to us immediately. Any intervention expenses which may arise are to be born by the buyer.

10.2 In the case of attachments, confiscation or other dispositions and interference by third parties, the buyer is to notify us immediately.

10.3 In the event of behavior of the buyer which violates the agreement, in particular in the event of delayed payment, we shall be entitled, after issuing appropriate payment reminder, to reclaim the delivery goods and the buyer shall be obligated to relinquish these.

10.4 The assertion of the reservation of ownership as well as the attachment of the delivery goods by us shall not be deemed to constitute withdrawal from the agreement, provided that the German Installment Purchase Act does not apply.

10.5 The buyer at this point assigns to us all accounts receivable up to the proportionate amount of our invoice, including sales tax/VAT with all ancillary rights, which he accumulates through resale to customers or third parties. This shall also apply in cases where the buyer has placed the purchase money claim which has accrued to him through resale into a current account arranged with a customer or third party. We will accept the assignment.

10.6 In the event of connection with real estate or moveable property belonging to third parties or with processing within the framework of a contract for work and services, then the buyer at this point assigns to us the receivables for work compensation and/or the resulting share of co-ownership up to the proportionate amount of our invoice, including sales tax/VAT for the jointly processed conditional goods. We will accept the assignment.

10.7 The buyer is hereby authorized to independently collect the preceding accounts receivable which have been assigned, within the framework of his usual order of business, provided that the collected proceeds are promptly forwarded to us. Such authorization to collect the assigned accounts receivable shall be revoked in the event of delayed payment, the petition for out of court insolvency proceedings or in the case of protest of a check or bill of exchange.

10.8 To the extent that the delivery goods have become essential components or immovable fixtures of real property, the buyer undertakes, in the event of noncompliance with the agreed payment deadlines, to allow us to dismantle or dismount such objects as can be removed without causing a substantial impediment to the structure, so as to retake possession of the objects. If the buyer interferes with our aforesaid rights, then he shall be obligated to compensate us for any resulting damages. The expenses for dismantling, dismounting or other expenses which arise, are to be born by the buyer.

10.9 If the realizable value of the collateral securities which have been reserved for us, either solely for the purposes of this retention of ownership clause or together with any other collateral, exceeds our secured claims by more than 10%, then we shall be obligated to the same extent to release collateral of our choice, if the buyer thus demands.

10.10 We are entitled, at the expense of the buyer, to insure the delivery goods against theft, fire, water and other damage, unless the buyer can provide evidence of already having done so himself.

10.11 In the event of behavior on the part of the buyer which violates the agreement, in particular in the event of delayed payment, we shall be entitled to repossess the delivery goods after an appropriate reminder process and the buyer shall be obligated to return the goods.

10.12 The filing of a petition for insolvency proceedings shall entitle to withdraw from the agreement and to demand the immediate return of the delivery goods.

## **11. Liability for Delivery Deficiencies (Warranty)**

For redhibitory defects and deficiencies in title of deliveries, we provide, to the exclusion of any further claims and subject to point 12, the following warranty:

### Redhibitory Defects

11.1 All those parts which prove to be defective due to circumstances or causes which occurred prior to passage of risk are, at our option, either to be reworked at no charge or replaced. The detection of any such defects is to be reported in writing to us at once. Defective parts which are replaced shall become our property.

11.2 For the carrying out of all reworking or substitute deliveries which we deem necessary, the buyer is to grant us upon notifying us of the problem, the time and opportunity required to remedy the problem, otherwise we shall be released from any liability for the resulting consequences. The buyer shall only have the right to remedy the defects himself or to have them remedied by third parties and subsequently demand compensation from us for the necessary expenses in urgent cases, where operational safety is at risk, or, in order to prevent extraordinarily large losses or damage from occurring, whereby we are to be notified immediately in such cases.

11.3 Of the direct costs which arise as a result of the reworking or substitute delivery, we shall bear - provided that the complaint proves to be justified - the cost of the substitute parts, including shipping free border, as well as reasonable costs for installation, disassembly and removal, and, within the Federal Republic of Germany, if desired, and if the circumstances of individual cases make it more economical, the provision of our fitters and support personnel. In all other cases the buyer shall bear such costs. Defective parts which are replaced shall become our property.

11.4 The manufacturer shall have the right, within the scope of legal regulations, to withdraw from the agreement, if we - subject to legal exceptions - allow an appropriate deadline, which has been granted to us for the reworking or replacement of the delivery goods, to expire without satisfactory results. If only a minor defect is present, then the buyer shall only be entitled to a reduction in the contract price of the delivery goods. In all other cases, the right to price reductions shall be excluded.

11.5 For the following cases in particular, no warranty shall apply:

Improper use or use other than intended use, faulty assembly or commissioning by the buyer or third parties, normal wear, faulty or negligent treatment, improper maintenance, use of unsuitable operating material, inadequate housing, deficient building surface, chemical, electrochemical or electrical influences, provided that we are not responsible for such conditions.

11.6 If the buyer or a third party carry out overhaul work in an improper manner, then the supplier shall not be liable for any resulting consequences. The same shall apply for any alterations which are made to the delivery goods without the prior consent of the supplier.

11.7 If parts or material are delivered by the buyer for the purpose of processing or providing materials which are necessary for the completion of a job order, then, unless otherwise agreed upon, there shall be no incoming goods inspection for non-obvious defects for such goods.

11.8 If computer software is to be included within the scope of our performance, then the following shall apply:

- a) A warranty shall apply that the delivered software does not contain any reproducible errors. The proper and intended use as specified in the agreement, however, is a condition of the warranty.
- b) The buyer is to notify us immediately if program errors are discovered.
- c) Reported errors are to be remedied by us. If the correction of an error proves to be impossible, then we will have to develop an alternative solution to the problem.
- d) If we are unable to fulfill our obligations from c), then the buyer shall have the option of accepting an appropriate reduction the payment agreed upon (to include for equipment for which use is significantly impaired, due to the program error) or the termination of the agreement.
- e) No warranty shall apply that the delivered software meets the special requirements of the buyer.

## Deficiencies in Title

11.9 Should the use of the delivery goods lead to a breach of industrial property rights or copyrights, then we will, on principle, secure at our expense the right for the buyer to continue using the delivery goods, or, we will modify the delivery goods in a manner which is reasonable for the buyer and which eliminates the breach of property rights.

If this is not possible to be done under economically suitable conditions or within a suitable period of time, then the buyer is entitled to withdraw from the agreement. We also shall be entitled to withdraw from the agreement if the aforesaid requirements are met.

Moreover, we shall indemnify the buyer against any undisputed claims of the respective owner of the property right or against such claims which are pronounced and granted through due process of law.

11.10 Our obligations pursuant to point 11.9, in the event of breach of property rights and copyrights, are ultimately subject to point 12 below.

Such obligations shall only exist if:

- the buyer notifies us immediately about asserted breaches of property rights or copyrights,
- the buyer provides us with reasonable support in our efforts to defend against any asserted claims or allows us to carry out the modification measures pursuant to point 11.9,
- all defensive measures, including out of court settlements, are left open to us as options,
- the deficiency in title does not stem from an instruction given by the buyer, and
- the breach of rights was not caused by the buyer modifying the delivery goods on his own or using them in a manner not authorized by the agreement.

## **12. Liability**

12.1 If, through our fault, the delivery goods cannot be used by the buyer as specified in the agreement, as a result of failure to implement or failure to properly implement suggestions or advice made or given before or after entering the agreement, or through violation or disregard of any other subsidiary contractual obligations, in particular the instructions for the use and maintenance of the delivery goods, then the provisions stipulated in points 11 and 12.2 shall respectively apply, to the exclusion of any further claims of the buyer.

12.2 For damage which has not occurred to the delivery goods themselves, we shall, for whatever legal reasons may apply, only be liable:

- if intent is present,
- in the case of gross negligence on the part of the owner, high managerial agents or executive employees,
- in the case of culpable injury to life, limb or health,
- in the case defects that we have fraudulently kept secret or the absence of which we have guaranteed,
- in the case of defects to the delivery goods, to the extent that liability exists, pursuant to product liability laws, for injury to persons or damage to property for privately used objects and
- in the event of culpable breach of material contractual obligations we shall also be liable in the case of gross negligence committed by non-executive employees or ordinary negligence, whereby the latter shall be limited to reasonably foreseeable damages which are typical for such agreements.

Any other claims are excluded.

## **13. Our Claims for Damage Compensation in the Event of Nonperformance on the Part of the Buyer**

In the event that we are entitled to demand compensation for damages due nonperformance, then the lump-sum damages to be compensated are to amount to at least 20% of the price agreed upon, without sales tax/VAT.

The amount of compensation is to be increased if we can provide evidence of larger damages and correspondingly to be decreased if the buyer can provide evidence of smaller damages.

## 14. Assembly , Commissioning

To the extent that assembly and/or commissioning are to be included within the scope of our performance, then the following supplementary conditions shall apply:

### 14.1 Price

Unless otherwise agreed upon, performance is to be compensated according to the amount of time needed, using our current rates for assembly. Additional payment is to be made for material expenses, as well as for travel expenses for our personnel, transport expenses, customs, custom's charges, transport insurance for luggage and tools, expenses for the procurement of identification documents as well as for other out-of-pocket expenses such as telephone charges etc...

### 14.2 Invoicing

The buyer is to certify the working, travelling and waiting time required by the assembly personnel, as well as their work output, on the assembly register provided by the assembly personnel. If the buyer refuses certification, or if for some other reason it is not possible for our personnel to obtain the certification, then invoicing shall be carried out on the basis of assembly registers filled out by our personnel.

All secondary jobs (for example masonry, mortising, plastering, carpentry, electrical wiring and connections, ground work and painting) are not included in the offer unless they are listed in separate posts with their corresponding quantities and prices. Work services which we carry out and which are not included in the original job order, are to be compensated in addition to the services included in the original job order, at our respective cost rates. The same shall apply for additional costs which we incur when, for reasons which we are not responsible for, our work services are interrupted.

### 14.3 Assistance by the Buyer

The buyer is obligated, at his own expense, to provide assistance during the carrying out of the work services. In particular, he is obligated to:

- a) to provide the necessary amount of suitable auxiliary personnel (masons, carpenters, fitters and other craftsmen and technicians) at the time when they are needed for the assembly work,
- b) conduct all ground, construction, bedding and framing and scaffolding work, including the acquisition of building materials, the placing of power and cooling water connections and drains, the setting up of sanitary facilities, electrical wiring, masonry and carpentry work, in a timely manner,
- c) prepare the necessary paths and for the delivery of assembly parts and suitable approach ways for cranes,
- d) prior to the begin of assembly work , provide the necessary information pertaining to covered electricity cables and gas and water pipes or other similar installations, as well as needed information about the structural statics, without being asked,
- e) provide heating, lighting, energy and water, including any necessary connections
- f) provide all required dry, lockable and theft-proof rooms for the storage of tools and for use as utility rooms for assembly personnel,
- g) safeguard the assembly site and materials from damaging influences of any and all kinds,



- h) point out any hazards (e.g. fire hazards in rooms or for materials) which could arise in connection with cutting, welding, thawing and soldering and take any necessary precautionary measures (for example the posting of fire guards, provision of fire extinguishing equipment and material etc.),
- i) provide suitable or protective clothing in the case of difficult or complicated working conditions like the presence of harmful vapors, gases, acids, dust particles etc.. The same shall apply for protective clothing and protective equipment which are required due to special circumstances at the assembly site and which are not typical for our industry
- j) immediately provide any necessary medical care should one of our assembly personnel become ill or suffer an accident, and notify us at once and
- k) acquire any required visas and work permits for the assembly personnel, in the event that the assembly site is located outside the Federal Republic of Germany, promptly procure any prerequisite authorization from public authorities or any other permission which may be required for the carrying out of the work or setting up of equipment or installations, inform our assembly personnel as to all obligations (reports etc) to local authorities as well as about existing safety regulations, support our personnel in their dealings with such authorities and to assist them in acquiring any needed permits which would guarantee them mobility in the country or to return home at any time in the possession of their property.

## 14.4 Acceptance

The buyer is obligated to accept the assembly as soon as he has been notified of its completion. The equipment is to be considered as accepted after a successful trial commissioning, even if the buyer did not, despite the request of our personnel, take part therein.

Upon request, individually completed phases of the total work service performance are to be specially accepted. If the equipment has been entirely or partially put into use or if the acceptance has been delayed through no fault of ours, then the acceptance is to be deemed as concluded after a period of two weeks subsequent to notification of completed assembly.

The use of the equipment prior to acceptance may only take place with our express consent, in which case, parts which have already been installed into the equipment are to be considered as already accepted.

## 15. Time Limitation of Claims

All claims of the buyer - whatever legal principles they may be based upon - expire after 12 months. For intentional or fraudulent behavior, as well as for cases which are governed by product liability laws, legal statutes of limitations shall apply. They shall also apply for defects to building structures or for delivery goods, which were properly employed in their intended use for building structures, and caused defects to such building structures.

## 16. Legal Validity of the Agreement

Should individual provisions of this agreement should become legally invalid, then the remaining parts shall remain binding and effective. This shall not apply in cases where upholding the agreement becomes an unreasonable hardship for one of the parties.

Should a clause be entirely or partially invalid, then the parties to the agreement are to immediately make all efforts to achieve the economic outcome which was the intent of the invalid clause, in another legally feasible manner.

## 17. Jurisdiction, Applicable Law

All actions resulting from disputes arising from the contractual relations defined in this agreement are to be filed in Giessen, Federal Republic of Germany. However, we do reserve the right to file suit in the jurisdiction of the buyer's place of business.

The relevant laws of the Federal Republic of Germany as they pertain to the legal relationships between two domestic parties shall exclusively apply to legal relations between us and the buyer.

An exception to this stipulation is the application of the uniform UN purchasing law or other conventions governing the law of purchasing goods and commodities.