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| *Project* | Project No. |
| *Document – No.*  | EV-20xx-xxxxx |
| *Status* | Draft |
| *Document type* | Non-Disclosure Agreement |

**NON-DISCLOSURE AGREEMENT**bilateral

between

**Stadler** Entity,

Address, PC city, Switzerland hereafter "**Stadler**"

and

**company**,

Address, PC city, country hereafter "**Business Partner**"

(Stadler and Business Partner hereinafter jointly referred to as "**Parties**" and individually as "**Party**")

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| **Index** | **Modification** | **Date** | **Created** | **Verified** | **Released** |
|  |  |  |  |  |  |
| R01 | version Stadler 2023 | 09.06.2023 | C. Thoma | R. Bollhalder | M. Krapf |
| R02 | version Entity 2023 |  |  |  |  |
| R02.1a | negotiated version |  |  |  |  |

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# Preamble

Stadler intends to engage the Business Partner for the XY project as a subcontractor / to have the (contract product) for the XY project developed and manufactured by the Business Partner / a potential involvement of the Business Partner for [a project / a collaboration on] / to conclude a contract for the supply of works and services with the Business Partner for [a project / a collaboration in] / to conclude a contract for the supply of works and services with the Business Partner concerning the manufacture and delivery of... /... ("**Purpose**"). For this Purpose, it is necessary that the Parties provide each other with information which may constitute, inter alia, business and/or trade secrets. The present Non-Disclosure Agreement governs the use of such information and intends to ensure its protection.

# Definitions

## Confidential Information

With the exception of the information expressly specified below, "**Confidential Information"** means all information that one Party ("**Disclosing Party"**) provides to the other Party ("**Receiving Party"**) or that the Receiving Party otherwise becomes aware of (e.g. through observation, examination, disassembling or testing), in relation to the Purpose since the signing of this Non-Disclosure Agreement, irrespective of the information’s form (oral, written, stored on data carriers, as samples, models or otherwise) and irrespective of whether it is expressly designated as secret or confidential in each individual case. If the Disclosing Party shares information of Related Entities in relation to the Purpose, such information is also deemed to be Confidential Information. The same applies to information that Related Entities of the Disclosing Party provide directly to the Receiving Party.

Information is not deemed to constitute Confidential Information if the Receiving Party provides evidence that:

* it was already in the public domain or was generally known at the time it was provided by the Disclosing Party; or
* it became generally known or came into the public domain through legal means after it was provided by the Disclosing Party but prior to disclosure and without a breach of this Non-Disclosure Agreement by the Receiving Party; or
* it was already lawfully in the Receiving Party's possession before the Confidential Information was provided to the Receiving Party by the Disclosing Party; or
* it was provided to the Receiving Party by a third party prior to the disclosure, unless the Receiving Party is aware that by providing the information the third party is in breach of a confidentiality obligation assumed towards the Disclosing Party; or
* it was independently developed by the Receiving Party without using the Confidential Information provided by the Disclosing Party; or
* it must be disclosed to third parties due to mandatory legal, judicial or administrative order; in such case, the Receiving Party shall use its best efforts to ensure that the Confidential Information is treated confidentially by the respective third party, and the Receiving Party shall immediately inform the Disclosing Party in writing of the order to disclose, to the extent permitted by law.

## Related Entities

"**Related Entities**" are all companies that are controlled by Stadler or the Business Partner, that control Stadler or the Business Partner or that are under common control with Stadler or the Business Partner. Control (including, with correlative meaning, the terms "to control", "controlled by" and "under common control with") means direct or indirect ownership or possession of more than 50% (fifty percent) of the voting rights or issued share capital of such company or the right to appoint or remove all or a majority of the members of the board of directors or any other governing board of such company or the power to directly or indirectly and substantially determine the management or policies of such company's business whether by way of ownership of share capital, holding of voting rights, by contract or otherwise.

# Duties of the Receiving Party

The Receiving Party is obliged to:

* keep all Confidential Information strictly confidential. The Receiving Party may disclose Confidential Information to third parties only with the prior written consent of the Disclosing Party. The Receiving Party further undertakes to impose all obligations under this Non-Disclosure Agreement on the third party or third parties by way of a non-disclosure agreement to be concluded with such third party or third parties; and
* use the Confidential Information solely for the Purpose; and
* take all necessary precautions to ensure that unauthorised persons do not gain access to the Confidential Information; and
* only disclose Confidential Information to those employees who need it in order to achieve the Purpose referred to in the Whereas above and who are obligated to maintain confidentiality both during their current employment contract and for an indefinite period after the termination thereof; and
* irretrievably destroy or surrender in full to the Disclosing Party upon first request all information, documents, data carriers, samples, models, etc. as well as any copies thereof. This does not apply to information that must be retained based on mandatory legal requirements or for evidentiary purposes, as well as electronic copies in email systems and back-ups. The confidentiality obligations set forth in this Non-Disclosure Agreement continue to apply to such retained Confidential Information. Destruction must be confirmed to the Disclosing Party in writing; and
* expressly refrain from using the Confidential Information for the purpose of further developing and/or replicating the Parties' products and/or their modules, components or structural parts, etc.

# Ownership and intellectual property rights

All information, documents, data carriers, samples, models, etc. which the Disclosing Party provides to the Receiving Party on the basis of this Non-Disclosure Agreement remain entirely the property of the Disclosing Party.

All intellectual property rights to Confidential Information remain entirely with the Disclosing Party. The provision of Confidential Information does not grant the Receiving Party any usage rights to existing intellectual property rights, including the right to register industrial property rights.

# Insider information

The Business Partner acknowledges that the shares of Stadler Rail AG are listed on the SIX Swiss Exchange, that some or all of the Confidential Information provided by Stadler is or may be price-sensitive information and that the use, exploitation or unauthorised disclosure of such Confidential Information may be prohibited under applicable criminal or administrative laws on insider trading and/or market abuse. The Business Partner undertakes to fully comply with these laws.

# Contractual penalty

In the event that either Party breaches any of the obligations under this Non-Disclosure Agreement, it shall pay a contractual penalty to the other Party in the amount of CHF 100,000.00 for each individual breach. The Party affected by the breach of contract shall also be entitled to claim damages or forfeiture of profits from the other Party. Payment of the contractual penalty shall not release the breaching Party from compliance with its obligations under this Agreement. The Party in breach of this Agreement shall also be obligated to restore the situation in accordance with this Agreement as far as possible.

# Group clause

Stadler is entitled to provide Confidential Information to its Related Entities. For the purposes of this Section 6, Stadler's Related Entities shall not be deemed third parties within the meaning of Section 2 of this Non-Disclosure Agreement.

The Business Partner acknowledges that this Non-Disclosure Agreement is concluded for the benefit of Stadler as well as of its Related Entities and, therefore, that each of these companies may assert claims based on a breach of an obligation under this Non-Disclosure Agreement (including but not limited to claims for specific performance as well as claims for damages) directly against the Business Partner. Stadler may assert its own claims against the Business Partner arising from or in relation to this Non-Disclosure Agreement as well as demand compliance with the obligations set forth in this Non-Disclosure Agreement and assert corresponding claims (including but not limited to claims for specific performance as well as claims for damages) in favour of its Related Entities, however the same claims may only be asserted once.

# Term of the Agreement

This Non-Disclosure Agreement will be valid for 2 (two) years from the date it is signed by both Parties.

The obligations of the Receiving Party specified in Section 2 will survive the termination of this Non-Disclosure Agreement for a period of 7 (seven) years.

# Applicable law and jurisdiction

This Non-Disclosure Agreement will be governed by substantive Swiss law, excluding the provisions on the conflict of laws and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The ordinary courts in Weinfelden, Canton of Thurgau, Switzerland, will have exclusive jurisdiction to adjudicate any disputes arising out of or in relation to this Agreement.

# Final provisions

Any and all amendments and supplements to this Non-Disclosure Agreement are only valid if made in writing. The same applies to this written form requirement.

If individual or several provisions of this Non-Disclosure Agreement are unenforceable or void, this shall not affect the validity of the remaining provisions. In such case, either Party may request that the Parties endeavour to replace the void or unenforceable provision with a valid and enforceable provision that comes as close as possible in terms of its legal and economic content to the void or unenforceable provision.

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place, date place, date

**Stadler:** **Business Partner:**

**Stadler Entity XY AG**

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