

**MUNSON MACHINERY CO.**

**TRIAL USE AGREEMENT**

Munson® Machinery Co. (“**Munson**” or “**we**”) agrees to provide the undersigned customer (“**Customer**” or “**you**”) with the equipment described below (the “**Machine**”) to be used by you on a trial basis subject to the terms and conditions outlined in this Trial Use Agreement, including the attached Trial Use Terms (this “**Agreement**”).

Machine Description: \_\_\_\_\_

Machine Model No.: \_\_\_\_\_

Trial Usage Period: \_\_\_\_\_ weeks

*(note: rental period commences when the unit is received at the customer’s facility and terminates when the unit leaves the customer’s facility, evidenced by the bill of lading)*

Daily Rental: \$ \_\_\_\_\_/day

Weekly Rental: \$ \_\_\_\_\_/week

Machine Loss Value: \$ \_\_\_\_\_

VFD Value (if appl): \$ \_\_\_\_\_ n/a \_\_\_\_\_

Voltage required: \_\_\_\_\_ volts

Customer Name: \_\_\_\_\_

Customer Address: \_\_\_\_\_

**Trial Usage**

The Machine is a test machine used to perform tests on a variety of materials. You may use the Machine only for applications approved by Munson in writing. Material tested in the Machine should not be used for human consumption.

**Customer Responsibilities**

During a Trial Usage Period and until the Machine is returned to Munson, you agree to:

1. Pay the daily or weekly rental specified above, as applicable. The rental will automatically increase to \$250 per day (\$500 per day for the Rotary Batch Blender) at the expiration of the Trial Usage Period.
2. Obtain Munson’s written approval for the material to be processed in the Machine by you and submit any applicable MSDS.
3. Require all supervisors and operators working with the Machine to review and be familiar with the operating manual for the Machine.
4. Cause the Machine to be operated by competent and qualified personnel in accordance with the operating instructions set forth in the operations manual.

5. Observe and comply with all safety, installation, operation, cleaning and troubleshooting instructions for the Machine.
6. Keep the Machine in the condition that it was in when delivered, subject to ordinary wear and tear, and maintain the Machine in accordance with the maintenance instructions set forth in the operations manual.
7. Refrain from disassembling, modifying or copying the Machine in any respect. Customer may not make alternations to or add attachments to the Machine.
8. Protect Munson's confidential information relating to the Machine, including all drawings, manuals, photographs and other proprietary information relating to the Machine.
9. Equipment will be shipped from Munson to the customer on a freight collect basis (or billed to customer's account), FOB Utica NY and will be returned on a freight prepaid basis with full insurance coverage on both shipments. No labels should be affixed to the Machine surfaces.
10. Maintain adequate insurance for the Machine.
11. Clean the Machine prior to its return to Munson. A charge of \$85 per hour, plus cleaning materials, will be charged to you if the Machine is not adequately cleaned (equipment should be in the same or better condition than when it was received).
12. Return the operating manual with the Machine. A fee of \$175 will be charged to you if you do not return the operating manual.
13. Observe and comply with the terms and conditions set forth on the attached TRIAL USE TERMS. The TRIAL USE TERMS are incorporated into and made a part of this Agreement.

***It should be noted this rental unit is a test unit and is used to perform tests on a variety of materials; for this reason any material you test in the rental unit should not be used for human consumption. Additionally, motor and controls (if so equipped) are not rated for hazardous and/or explosive areas and as a result should not be used in such environments.***

### **Purchase Options**

The Machine is used only for trial purposes; it is not for sale. If you purchase a machine from Munson similar to the Machine, the rental charges paid by you under this Agreement, up to a two week maximum, will be applied to reduce the purchase price of the new machine on a dollar for dollar basis, provided that we receive your order within sixty (60) days of the end of the Trial Use Period.

By executing this Agreement, you acknowledge your agreement to the terms and conditions of this Agreement, including the attached TRIAL USE TERMS.

MUNSON® MACHINERY CO.

CUSTOMER

By: \_\_\_\_\_

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Name/Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## TRIAL USE TERMS

1. Determination of Rental Payments. The Trial Usage Period begins on the day the Machine is received at your facility, as evidenced by the bill of lading. The rental is due for each day of the Trial Use Period and continuing through and including the day the Machine is shipped from the Customer facility, as evidenced by the bill of lading. The Rent Payments are exclusive of any state or local taxes, any duties, or any assessment in the nature thereof, all of which shall be the sole liability of, and shall be paid by, the Customer.

2. Ownership of Machine: No Liens. During the Trial Usage Period and until the Machine is returned to Munson, title to the Machine shall at all times remain exclusively in Munson. Customer shall not assign, pledge, or otherwise transfer or encumber its interest in this Agreement or the Machine. Customer further agrees to execute any additional certificates, statements or documents necessary in the reasonable opinion of Munson or Munson's counsel, to protect the interest of Munson in the Machine and this Agreement.

3. Compliance with Laws. Customer shall comply with all governmental laws, regulations and requirements, and all insurance requirements, if any, with respect to the use, maintenance and operation of the Machine.

4. Inspection. Munson and its agents may, upon reasonable notice, enter the premises where the Machine is located at any time during business hours of the Customer for the purposes of inspecting the Machine and for any other purpose contemplated in this Agreement.

5. Repairs. Upon the return of the Machine to Munson, Munson will inspect the Machine and make all repairs and replacements which are required to keep the Machine in good repair, condition, and working order and will replace any worn-out component of the Machine with a component or components equal in quality or capability to the components replaced. The cost of all repairs to and replacements of the Machine or any part of the Machine which Munson determines to be necessary or advisable as a result of Customer's use of the Machine will be charged to Customer on a time and materials basis.

6. Risk of Loss. Customer shall bear the entire risk of loss, theft, damage, or destruction of the Machine from any cause whatsoever, including shipping to and from Customer's facility. In the event the Machine is lost, stolen, destroyed, damaged beyond repair, or permanently rendered unfit for use, Customer shall immediately notify Munson and shall pay to Munson an amount equal to the Machine Loss Value set forth on the first page of this Agreement. After the payment of the Machine Loss Value to Munson, Munson shall transfer to Customer, as is and without recourse or warranty all of Munson's right, title, and interest, if any, in and to the lost or destroyed Machine.

7. DISCLAIMER OF WARRANTIES. MUNSON MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH RESPECT TO THE CONDITION OR PERFORMANCE OF THE MACHINE INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WITH RESPECT TO PATENT INFRINGEMENT OR THE LIKE.

8. LIMITATION OF LIABILITY. MUNSON SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT OR MUNSON'S OWNERSHIP OF THE MACHINE, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF PRODUCTION FACILITIES OR MACHINE, LOSS OF PROFITS, PROPERTY, DAMAGES OR LOST PRODUCTION, WHETHER SUFFERED BY CUSTOMER OR ANY THIRD PARTY.

9. Customer's Indemnification of Munson. Customer assumes liability for and agrees to protect, indemnify, hold harmless, and defend Munson and its agents and employees from and against any and all liabilities, obligations, claims, losses, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonable attorneys' fees and related expenses) arising from, pertaining to, or asserted against Munson as a result of: (a) any accident, injury to, or death of persons (including workmen) or loss of or damage to property occurring in connection with the Customer's installation, use, possession, or operation of the Machine: (b) any and all loss of or damage to the Machine, usual wear and tear expected, or (c) any failure of on the part of Customer to comply with any of the terms of this Agreement. Upon request of Munson, Customer shall, at Customer's expense, resist and defend any suit relating to the Machine: provided, however, that Munson shall have the right to participate in Customer's defense at its own expense. The obligations of Customer under this Section 9 shall survive an termination of this Agreement.

10. Events of Default. Occurrence of any of the following events shall constitute an Event of Default: (i) if Customer fails to make a rent payment within five (5) days after payment is due; (ii) if Customer fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it under this Agreement; (iii) if Customer makes an assignment of the Machine for the benefit of creditors or proceedings are commenced by or against Customer for relief under any bankruptcy or insolvency laws; and (iv) if any levy, seizure, or attachment upon the Machine or Customer's interest in the Machine occurs.

11. Remedies. Upon the occurrence of Event of Default, Munson may exercise any rights or remedies available to an equipment lessor under the Uniform Commercial Code or any other applicable law, including, without limitation, the right to collect all unpaid rental payments and to take possession of the Machine without any court order or other process of law. Munson's remedies under this Agreement shall not be deemed exclusive but shall be cumulative, and shall be in addition to all other remedies available to Munson at law or in equity. The failure of Munson to exercise any right granted to it by this Agreement shall in no event constitute a waiver of that right. Munson shall also be entitled to recover from Customer all expenses (including reasonable attorney's fees) incurred by Munson while enforcing Munson's rights under this Agreement or pursuing any other remedies available to Munson.

12. Miscellaneous. This Agreement sets forth the entire understanding of the parties and supersedes all prior agreements between the parties, whether written or oral relating to the subject matter of this Agreement. The terms and provisions of this Agreement shall be modified, amended, waived, discharged, or terminated only by an instrument in writing signed by the party against who the enforcement of the modification, amendment, waiver, discharge or termination is sought. This Agreement shall be binding upon and inure to the benefit of Munson and Customer and their successors and permitted assigns. The Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of New York.