
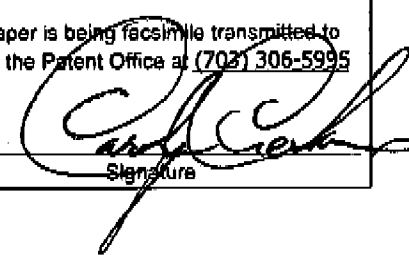


FORM PTO-1595 (Rev. 6-93)		RECORDATION FORM COVER SHEET		U.S. Department of Commerce	
OMB No. 0651-0011 (exp. 4/94)		PATENTS ONLY		Patent and Trademark Office	
To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document or copy thereof.					
<b>1. Name of conveying party(ies):</b>  Neutral Posture Ergonomics, Inc. 3904 North Texas Avenue Bryan, Texas 77803  Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			<b>2. Name and address of receiving party(ies):</b>  Name: Neutral Posture Ergonomics, Inc.  Internal Address: Attn: Rebecca E. Boenigk  Street Address: 3904 N. Texas Ave.  City: Bryan State: TX Zip: 77803  Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>3. Nature of conveyance:</b> <input type="checkbox"/> Assignment <input checked="" type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input checked="" type="checkbox"/> Change of Name <input type="checkbox"/> Other  Execution Date: 04/27/01					
<b>4. Application number(s) or registration number(s):</b> If this document is being filed together with a new application, the execution date of the application is:  A. Patent Application No.(s): 09/588,246; 09/654,754; 10/313,407  B. Patent No.(s): 6,296,312; 5,961,134; 6,220,663; 6,290,295; 6,142,571; D463,441; D458,777  Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
<b>5. Name and address of party to whom correspondence concerning document should be mailed:</b>  Name: Gregg A. Duffey Howrey Simon Arnold & White, LLP 750 Bering Drive  City: Houston State: Texas Zip: 77057			<b>6. Total number of applications and patents involved:</b> 10  <b>7. Total fee (37 C.F.R. 3.41)</b> \$ 400.00 <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account if check insufficient or inadvertently omitted  <b>8. Deposit account no.</b> 01-2508/12041.0001.000000 (Attach duplicate copy of this page if paying by deposit account)		
DO NOT USE THIS SPACE					
<b>9. Statement and signature.</b> <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i>  Gregg A. Duffey  Name of Person Signing, Reg. No. 42,501  Signature:  Date: 3-28-03  Total number of pages including cover sheet, attachments and documents: 4					

CERTIFICATE OF FACSIMILE TRANSMISSION	
I hereby certify that this paper is being facsimile transmitted to the Assignment Branch at the Patent Office at (703) 306-5995 on the date below.	
03/28/03	
Date	Signature



# The State of Texas

## SECRETARY OF STATE

### CERTIFICATE OF MERGER

The undersigned, as Secretary of State of Texas, hereby certifies that the attached Articles of Merger of

NEUTRAL POSTURE ERGONOMICS, INC.

A Texas Corporation

with and into

NEUTRAL POSTURE ERGONOMICS MERGER CO., INC.

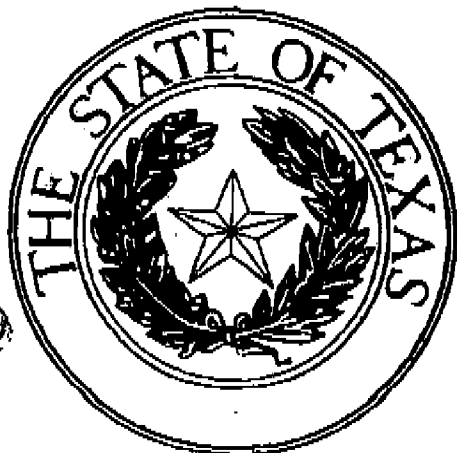
A Texas Corporation which changed its name to:

NEUTRAL POSTURE ERGONOMICS, INC.

have been received in this office and are found to conform to law. ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Merger.

Filed April 27, 2001

Effective April 27, 2001



*Henry Cuellar*

Henry Cuellar  
Secretary of State

REEL: 13516 FRAME: 0721

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Gwyn Shea  
Secretary of State

## Office of the Secretary of State

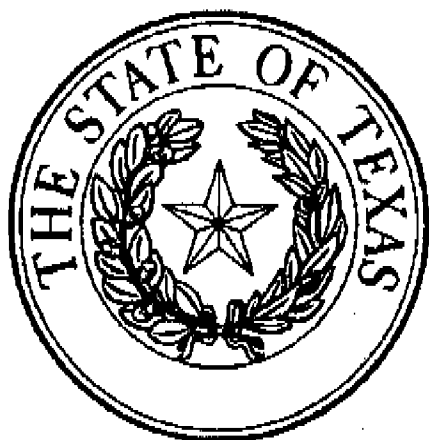
The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

NEUTRAL POSTURE, INC.  
Filing Number: 160347300

Articles Of Merger  
Articles Of Amendment

April 27, 2001  
May 02, 2001

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on July 10, 2002.



A handwritten signature in cursive script that reads "Gwyn Shea".

Gwyn Shea  
Secretary of State

**FILED**  
In the Office of the  
Secretary of State of Texas

**APR 27 2001**

**ARTICLES OF MERGER  
MERGING  
NEUTRAL POSTURE ERGONOMICS, INC.  
WITH AND INTO  
NEUTRAL POSTURE ERGONOMICS MERGER CO., INC.**

Pursuant to Article 5.04 of the Texas Business Corporation Act ("TBCA"), these Articles of Merger are hereby adopted by Neutral Posture Ergonomics, Inc., a Texas corporation (the "Company"), and Neutral Posture Ergonomics Merger Co., Inc., a Texas corporation ("Mergerco"), for the purpose of merging the Company with and into Mergerco (the "Merger"). The Company and Mergerco are each a "Constituent Corporation" and collectively, the "Constituent Corporations."

1 The name of each Constituent Corporation, the type of such Constituent Corporation and the laws under which such corporation was organized and governed are:

<u>Name of Corporation or Other Entity</u>	<u>Type of Entity</u>	<u>State</u>
Neutral Posture Ergonomics, Inc.	Corporation	Texas
Neutral Posture Ergonomics Merger Co., Inc.	Corporation	Texas

2. An Agreement and Plan of Merger (the "Plan") providing for the merger of the Company with and into Mergerco is attached hereto as Exhibit A and is incorporated herein by reference. The Plan has been adopted by the unanimous consent of the board of directors and affirmative vote of the holders of at least two thirds of the outstanding common stock of each Constituent Corporation, and the Plan, its approval, and the performance of its terms were duly authorized by all action required by the laws under which each Constituent Corporation was incorporated and by its constituent documents.

3. The name of the surviving corporation is Neutral Posture Ergonomics Merger Co., Inc. (the "Surviving Corporation"). The Surviving Corporation will be governed by the laws of the State of Texas.

4. The articles of incorporation of Mergerco, as amended pursuant to this Section 4, shall constitute the articles of incorporation of the Surviving Corporation, and the bylaws of Mergerco as in effect immediately prior to the Effective Time (as defined herein) shall constitute the bylaws of the Surviving Corporation. Concurrently with the filing of these Articles of Merger, Article I of the articles of incorporation of the Surviving Corporation shall be amended to change the name of the Surviving Corporation to Neutral Posture Ergonomics, Inc.

5. As to each Constituent Corporation, the approval of whose shareholders is required, the number of outstanding shares of each class or series of stock of such Constituent Corporation entitled to vote, with other shares or as a class, on the Plan are as follows:

<u>Name of Corporation</u>	<u>State</u>	<u>Number of Shares Outstanding</u>	<u>Designation of Class or Series</u>	<u>Number of Shares Entitled to Vote as a Class or Series</u>
Neutral Posture Ergonomics, Inc.	Texas	3,271,800	Common	None
Neutral Posture Ergonomics Merger Co., Inc.	Texas	500	Common	None

D-870645v1

**PATENT**  
**REEL: 13516 FRAME: 0723**

6. As to each Constituent Corporation, the approval of whose shareholders is required, the number of shares, not entitled to vote only as a class, voted for and against the Plan, respectively, are as follows.

<u>Name of Corporation</u>	<u>State</u>	<u>Total Voted For</u>	<u>Total Voted Against</u>	<u>Designation of Class or Series</u>
Neutral Posture Ergonomics, Inc.	Texas	2,373,673	34,259	Common
Neutral Posture Ergonomics Merger Co., Inc.	Texas	500	0	Common

7. The Merger shall become effective on April 27, 2001, in accordance with the provisions of Article 10.03 of the TBCA (the "Effective Time").

8. A copy of the complete executed Plan is on file at the office of the Surviving Corporation located at 3904 N. Texas Avenue, Bryan, Texas 77803. A copy of the complete executed Plan will be furnished by the Surviving Corporation, on written request and without charge, to any shareholder of each domestic corporation that is a party to or created by the Plan and to any creditor or obligee of the parties to the merger at the time of the merger if such obligation is then outstanding.

9. The Surviving Corporation will be responsible for the payment of all fees and franchise taxes owed by each Constituent Corporation pursuant to the TBCA if the same are not timely paid.

(Remainder of page intentionally left blank.)

These Articles of Merger have been executed by the undersigned effective as of April 27, 2001

**NEUTRAL POSTURE ERGONOMICS, INC.**

By: 

Thomas G. Peterson  
President and Chief Operating Officer

**NEUTRAL POSTURE ERGONOMICS MERGER  
CO., INC.**

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

Rebecca E. Bonnigle  
Chairman and Chief Executive Officer

These Articles of Merger have been executed by the undersigned effective as of April 27, 2001.

**NEUTRAL POSTURE ERGONOMICS, INC.**

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

Thomas G. Peterson  
President and Chief Operating Officer

**NEUTRAL POSTURE ERGONOMICS MERGER  
CO., INC.**

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

Rebecca R. Boenigk  
Chairman and Chief Executive Officer

D-97064371

Before me, on this 27<sup>th</sup> day of April, 2001, appeared Thomas G. Peterson, President and Chief Operating Officer of Neutral Posture Ergonomics, Inc., a Texas corporation, who acknowledged that the foregoing instrument is the act and deed of that corporation and that the facts stated therein are true.


Diane Thornton  
Notary Public

My Commission Expires:

(Notarial Seal)



Before me, on this 27<sup>th</sup> day of April, 2001, appeared Rebecca E. Boenigk, Chairman and Chief Executive Officer of Neutral Posture Ergonomics Merger Co., Inc., a Nevada corporation, who acknowledged that the foregoing instrument is the act and deed of that corporation and that the facts stated therein are true.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

(Notarial Seal)



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**AGREEMENT AND PLAN OF MERGER**

**by and between**

**NEUTRAL POSTURE ERGONOMICS, INC.**

**and**

**NEUTRAL POSTURE ERGONOMICS MERGER CO., INC.**

**Dated as of January 30, 2001**

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# EXHIBIT A - The Buyer Group

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") dated as of January 30, 2001 is among Neutral Posture Ergonomics, Inc., a Texas corporation (the "Company"), and Neutral Posture Ergonomics Merger Co., Inc., a Texas corporation ("Mergerco").

### RECITALS

WHEREAS, a special committee of the Board of Directors of the Company consisting solely of independent directors (the "Special Committee") and the Board of Directors of the Company have determined that the merger of the Company with and into Mergerco upon the terms and conditions stated herein (the "Merger"), pursuant to which each share of common stock, par value \$0.01 per share, of the Company ("Company Common Stock"), other than (i) shares owned by the Company, (ii) shares owned by certain shareholders of Mergerco named in Exhibit A attached hereto and their affiliates (as defined in Rule 144 promulgated pursuant to the Securities Act of 1933, as amended) and Family (as defined in Section 10.9 below) (collectively, the "Buyer Group"), and (iii) Dissenting Shares (defined in Section 4.3 below), will be converted into the right to receive \$2.27 in cash, is advisable, fair and in the best interests of the Company and its shareholders and have recommended approval of this Agreement by the shareholders of the Company, and

WHEREAS, the Board of Directors of the Company and the Board of Directors of Mergerco have determined the Merger, in the manner contemplated herein, to be desirable and in the best interests of their respective corporations and shareholders and to be consistent with, and in furtherance of, their respective business strategies and goals, and, by resolutions duly adopted, have approved and adopted this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and of the representations, warranties, covenants and agreements contained herein, the parties hereto hereby agree as follows (with defined terms, the definition for which is not otherwise given in the text of this Agreement, being defined in Section 10.9 below):

### ARTICLE I

#### THE MERGER

Section 1.1. The Merger Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.3 below), the Company shall be merged with and into Mergerco in accordance with this Agreement, and the separate corporate existence of the Company shall thereupon cease, with Mergerco being the surviving corporation (Mergerco is

also sometimes hereinafter referred to as the "Surviving Corporation"). The Merger shall have the effects specified in the Texas Business Corporation Act (the "TBCA").

Section 1.2. The Closing. Subject to the terms and conditions of this Agreement, the closing of the Merger (the "Closing") shall take place (a) at the offices of Haynes and Boone, L.L.P., 901 Main Street, Suite 3100, Dallas, Texas, at 9:00 a.m., local time, on the first business day after the day on which the last to be fulfilled or waived of the conditions set forth in Article VIII shall be fulfilled or waived in accordance herewith or (b) at such other time, date or place as the Company and Mergerco may agree. The date on which the Closing occurs is hereinafter referred to as the "Closing Date."

Section 1.3. Effective Time. If all the conditions to the Merger set forth in Article VIII shall have been fulfilled or waived in accordance herewith and this Agreement shall not have been terminated as provided in Article IX, the Company and Mergerco shall cause Articles of Merger (the "Articles of Merger") meeting the requirements of Section 5.04 of the TBCA to be properly executed and filed in accordance with such section on the Closing Date. The Merger shall become effective at the time of filing of the Articles of Merger with the Secretary of State of the State of Texas in accordance with the TBCA, or at such later time that the parties hereto shall have agreed upon and designated in such filing as the effective time of the Merger (the "Effective Time").

## ARTICLE II

### ARTICLES OF INCORPORATION AND BYLAWS OF THE SURVIVING CORPORATION

Section 2.1. Articles of Incorporation. The articles of incorporation of the Mergerco in effect immediately prior to the Effective Time shall be the articles of incorporation of the Surviving Corporation.

Section 2.2. Bylaws. The bylaws of the Mergerco in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation.

## ARTICLE III

### DIRECTORS AND OFFICERS OF THE SURVIVING CORPORATION

Section 3.1. Directors of Surviving Corporation. The directors of Mergerco immediately prior to the Effective Time shall be the directors of the Surviving Corporation as of the Effective Time.

Section 3.2. Officers of Surviving Corporation. The officers of Mergerco immediately prior to the Effective Time shall be the officers of the Surviving Corporation as of the Effective Time.

## ARTICLE IV

### EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS

#### Section 4.1. Effect of Merger on Capital Stock.

(a) At the Effective Time, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than (i) Dissenting Shares (as defined in Section 4.3) and (ii) shares of Company Common Stock (x) held in the Company's treasury or (y) owned by the Buyer Group) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive \$2.27 in cash (the "Consideration"), subject to the exchange process contemplated in Section 4.2(b) and to adjustment as provided in Section 4.4.

(b) At the Effective Time, and without any action on the part of the holder of Company Common Stock, each share of Company Common Stock (other than treasury shares and shares owned by the Buyer Group) shall cease to be outstanding and shall be canceled and retired and shall cease to exist, and each holder of a certificate (a "Certificate") representing any shares of Company Common Stock (other than treasury shares and shares owned by the Buyer Group) shall thereafter cease to have any rights with respect to such shares, except the right to (i) receive, without interest, upon the surrender of such Certificate, the Consideration in accordance with Section 4.2(b) or (ii) payment in accordance with Section 4.3.

(c) Each share of Company Common Stock and all other shares of capital stock of the Company that are held in the Company's treasury shall, at the Effective Time and by virtue of the Merger, cease to be outstanding, be canceled and retired and cease to exist without payment of any consideration therefor, and no Consideration, stock of Mergerco or other consideration shall be delivered in exchange therefor.

(d) At the Effective Time, each share of Company Common Stock owned by the members of the Buyer Group shall be converted into and become one fully paid and non-assessable share of common stock, par value \$0.01 per share, of the Surviving Corporation. Such shares of the Surviving Corporation issued to the members of the Buyer Group will continue in existence upon the consummation of the Merger and shall constitute issued and outstanding shares of capital stock of the Surviving Corporation on the Closing Date.

(e) Each issued and outstanding share of common stock of Mergerco at the Effective Time of the Merger shall continue to be an issued and outstanding share of common stock, par value \$0.01 per share, of the Surviving Corporation.

#### Section 4.2. Exchange of Certificates Representing Company Common Stock.

(a) As soon as reasonably practicable after the Effective Time, but in no event later than five days following the Closing, the Surviving Corporation shall mail to each holder of record of one or more Certificates (other than to members of the Buyer Group and to holders of Company Common Stock that, pursuant to Section 4.1(c), are canceled without payment of any consideration therefor) (A) a letter of transmittal (the "Letter of Transmittal") which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Surviving Corporation and shall be in such form and have such other provisions as the Surviving Corporation may reasonably specify and (B) instructions for use in effecting the surrender of the Certificates in exchange for the Consideration. Upon surrender of a Certificate for cancellation to the Surviving Corporation, together with such Letter of Transmittal, duly executed and completed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange for each share of Company Common Stock represented by such Certificate cash in an amount equal to the Consideration, after giving effect to any required withholding tax, and the Certificate so surrendered shall forthwith be marked as canceled. No interest will be paid or accrued on the Consideration payable to holders of Certificates. In the event of a transfer of ownership of Company Common Stock which is not registered in the transfer records of the Company, the Consideration shall be paid to such a transferee if the Certificate representing such Company Common Stock is presented to the Surviving Corporation, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid.

(b) At or after the Effective Time, there shall be no transfers on the stock transfer books of the Company of the shares of Company Common Stock which were outstanding immediately prior to the Effective Time

(c) None of the Company, the Surviving Corporation or any other person shall be liable to any former holder of shares of Company Common Stock for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

(d) The Surviving Corporation shall be entitled to deduct and withhold from the Consideration otherwise payable pursuant to this Agreement to any holder of shares of Company Common Stock such amounts as the Surviving Corporation reasonably determines are required to be deducted and withheld with respect to the making of such payment under the United States Internal Revenue Code of 1986, as amended, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld by the Surviving Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Common Stock in respect of which such deduction and withholding was made by the Surviving Corporation.

(e) In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such person of a bond in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Surviving Corporation will

deliver in exchange for such lost, stolen or destroyed Certificate cash in an amount equal to the Consideration deliverable in respect thereof pursuant to this Agreement

Section 4.3. Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, no share of Company Common Stock, the holder of which shall not have voted shares in favor of the Merger and shall have properly complied with the provisions of Section 5.12 of the TBCA as to appraisal rights (a "Dissenting Share"), shall be deemed converted into and to represent the right to receive the Consideration hereunder; and the holders of Dissenting Shares, if any, shall, as of the Effective Time, cease to retain any rights with respect to the Company Common Stock other than the right to payment, solely from the Surviving Corporation, of the appraised value of such Dissenting Shares to the extent permitted by and in accordance with the provisions of Section 5.13 of the TBCA; *provided, however*, that (i) if any holder of Dissenting Shares shall, under the circumstances permitted by the TBCA, subsequently deliver a written withdrawal of his or her demand for appraisal of such Dissenting Shares, (ii) if any holder fails to establish his or her entitlement to rights to payment as provided in such Section 5.12 or (iii) if neither any holder of Dissenting Shares nor the Surviving Corporation has filed a petition demanding a determination of the value of all Dissenting Shares within the time provided in such Section 5.12, such holder or holders (as the case may be) shall forfeit such right to payment for such Dissenting Shares pursuant to such Sections 5.11 and 5.12 of the TBCA and each such Dissenting Share shall thereupon be deemed to be converted into the right to receive the Consideration in accordance with Sections 4.1 and 4.2 of this Agreement

Section 4.4 Adjustment of Consideration. In the event that, subsequent to the date of this Agreement but prior to the Effective Time, the Company changes the number of shares of the Company Common Stock issued and outstanding as a result of a stock split, reverse stock split, stock dividend, recapitalization or other similar transaction without receipt of consideration with respect to Company Common Stock, the Consideration shall be appropriately adjusted.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF COMPANY

The Company represents and warrants to Mergerco that.

Section 5.1. Existence, Good Standing, Corporate Authority. The Company and each of its corporate Subsidiaries is a corporation duly incorporated, validly existing and in good standing under the laws of their respective jurisdictions of incorporation. Each of the Company and its Subsidiaries has all requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign corporation or other organization in good standing in each state or jurisdiction in which their ownership or leasing of property or conduct of business legally requires such qualification, except where failure to be so qualified, individually or in the aggregate, would not have a Company Material Adverse Effect. The copies of the Company's articles of incorporation and bylaws previously made available to Mergerco are true, complete and correct and contain all amendments as of the date hereof.

**Section 5.2. Authorization, Validity and Effect of Agreements** The Company has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents contemplated hereby. This Agreement and the consummation by the Company of the Merger and the other transactions contemplated hereby have been duly authorized and approved by a unanimous vote of the Special Committee and the Board of Directors of the Company and by all other requisite corporate action, other than, with respect to the Merger, the approval and adoption of this Agreement by the Company's shareholders and the filing of the Articles of Merger. This Agreement constitutes the valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

**Section 5.3. Capitalization** The authorized capital stock of the Company consists of 14,000,000 shares of Company Common Stock and 1,000,000 shares of preferred stock, par value \$0.01 per share, of the Company ("Company Preferred Stock"). As of January 17, 2001, (i) 3,271,800 shares of Company Common Stock and no shares of Company Preferred Stock were issued and outstanding, (ii) 270,360 shares of Company Common Stock were reserved for issuance pursuant to Company Options (defined below) and (iii) 37,000 shares of Company Common Stock were held as treasury stock. All such issued and outstanding shares of Company Common Stock and Company Preferred Stock are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights. Other than the Company Options and the warrants issued under the Warrant Agreement dated October 24, 1997, between the Company and Huberman Financial, Inc. (the "Underwriter Warrants"), there are no outstanding shares of capital stock and there are no options, warrants, calls, subscriptions, convertible securities, or other rights, agreements or commitments that obligate the Company or any of its Subsidiaries to issue, transfer or sell any shares of capital stock or other voting securities of the Company or any of its Subsidiaries. For the purposes of this Agreement, "Company Option" refers to any option granted pursuant to either the Neutral Posture Ergonomics, Inc. Amended and Restated 1996 Nonqualified Stock Option Plan dated as of October 9, 1997 or the Neutral Posture Ergonomics, Inc. 1997 Omnibus Securities Plan dated as of September 22, 1997. The Company has no outstanding bonds, debentures, notes or other obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the shareholders of the Company on any matter.

**Section 5.4. No Conflict**

(a) Neither the execution and delivery by the Company of this Agreement nor the consummation by the Company of the transactions contemplated hereby in accordance with the terms hereof will: (i) conflict with or result in a breach of any provisions of the articles of incorporation or bylaws of the Company; (ii) violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination or in a right of termination or cancellation of, or give rise to a right of purchase under, or accelerate the performance required by, or result in the creation of any lien upon any of the properties of the Company or its

Subsidiaries under, or result in being declared void, voidable, or without further binding effect, or otherwise result in a detriment to the Company or any of its Subsidiaries under, any of the terms, conditions or provisions of, any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, lease, contract, agreement, joint venture or other instrument or obligation to which the Company or any of its Subsidiaries is a party, or by which the Company or any of its Subsidiaries or any of their properties is bound or affected, or (iii) contravene or conflict with or constitute a violation of any provision of any law, rule, regulation, judgment, order or decree binding upon or applicable to the Company or any of its Subsidiaries, except, in the case of matters described in clause (ii) or (iii), as would not have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Neither the execution and delivery by the Company of this Agreement nor the consummation by the Company of the transactions contemplated hereby in accordance with the terms hereof will require any consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority, other than (i) the filings provided for in Article I and (ii) filings required the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with respect to the special meeting of the shareholders of the Company to approve and adopt this Agreement and the transactions contemplated hereby, and the Schedule 13E-3 (as hereinafter defined) (collectively, the "Filings"), except for any consent, approval or authorization the failure of which to obtain and for any filing or registration the failure of which to make would not have a Company Material Adverse Effect.

Section 5.5 Information Provided to Investment Bankers. To the actual knowledge of the executive officers of the Company, the information provided by the Company to Southwest Securities, Inc. ("Southwest Securities") in connection with the Merger does not contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 5.6. No Brokers. The Company has not entered into any contract, arrangement or understanding with any person or firm that may result in the obligation of Mergerco or the Company to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, except that Southwest Securities has been retained by the Special Committee as its financial advisor and by the Company to render a fairness opinion, the arrangements with whom have been disclosed in writing to Mergerco prior to the date hereof

Section 5.7. Vote Required. The affirmative vote of the holders of at least two-thirds of the outstanding shares of Company Common Stock contemplated by Section 8.1(a)(ii) is the only vote of the holders of any class or series of Company capital stock necessary to approve and adopt this Agreement and the transactions contemplated hereby.

Section 5.8 Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Southwest Securities to the effect that, as of the date thereof, the

Consideration is fair, from a financial point of view, to the holders of the Company Common Stock

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF MERGERCO

Mergerco represents and warrants to the Company that:

Section 6.1. Existence, Good Standing, Corporate Authority. Mergerco is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Texas. Mergerco has all requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted. Mergerco is duly qualified to do business as a foreign corporation or other organization in good standing in each state or jurisdiction in which its ownership or leasing of property or conduct of business legally requires such qualification, except where failure to be so qualified, individually or in the aggregate, would not have a Mergerco Material Adverse Effect. The copies of Mergerco's articles of incorporation and bylaws previously made available to the Company are true, complete and correct and contain all amendments as of the date hereof.

Section 6.2. Authorization, Validity and Effect of Agreements. Mergerco has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents contemplated hereby to which it is a party. This Agreement and the consummation by Mergerco of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Mergerco. This Agreement constitutes the valid and legally binding obligation of Mergerco, enforceable against Mergerco in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

Section 6.3. No Conflict.

(a) Neither the execution and delivery by Mergerco of this Agreement nor the consummation by Mergerco of the transactions contemplated hereby in accordance with the terms hereof will: (i) conflict with or result in a breach of any provisions of the articles of incorporation or bylaws of Mergerco; (ii) violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination or in a right of termination or cancellation of, or give rise to a right of purchase under, or accelerate the performance required by, or result in the creation of any lien upon any of the properties of Mergerco under, or result in being declared void, voidable, or without further binding effect, or otherwise result in a detriment to Mergerco under, any of the terms, conditions or provisions of, any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, lease, contract, agreement, joint venture or other instrument or obligation to which Mergerco is a party, or by which Mergerco or any of its properties is bound or affected; or (iii) contravene or conflict with or constitute a violation of any provision of any law, rule, regulation, judgment, order or decree binding upon or applicable to

Mergerco, except, in the case of matters described in clause (ii) or (iii), as would not have, individually or in the aggregate, a Mergerco Material Adverse Effect.

(b) Neither the execution and delivery by Mergerco of this Agreement nor the consummation by Mergerco of the transactions contemplated hereby in accordance with the terms hereof will require any consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority, other than the Filings, except for any consent, approval or authorization the failure of which to obtain and for any filing or registration the failure of which to make would not have a Mergerco Material Adverse Effect.

Section 6.4. No Brokers. Mergerco has not entered into any contract, arrangement or understanding with any person or firm that may result in the obligation of Mergerco or the Company to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby

Section 6.5. Mergerco. Mergerco was formed solely for the purpose of engaging in the transactions contemplated by this Agreement and has not engaged in any activities other than in connection with or as contemplated by this Agreement.

## ARTICLE VII

### COVENANTS

Section 7.1 Conduct of Businesses. Prior to the Effective Time, except as expressly contemplated by any other provision of this Agreement or as required by applicable law, unless Mergerco has consented in writing thereto, the Company:

(a) shall, and shall cause each of its Subsidiaries to, conduct its operations according to their usual, regular and ordinary course in substantially the same manner as heretofore conducted,

(b) shall use its commercially reasonable efforts, and shall cause each of its Subsidiaries to use its commercially reasonable efforts, to preserve intact their business organizations and goodwill, keep available the services of their respective officers and employees and maintain satisfactory relationships with those persons having business relationships with them,

(c) shall not amend its articles of incorporation or bylaws;

(d) shall not (i) except pursuant to the exercise of Company Options, issue any shares of its capital stock, effect any stock split or otherwise change its capitalization as it existed on the date hereof, (ii) grant, confer or award any option, warrant, conversion right or other right not existing on the date hereof to acquire any shares of its capital stock, (iii) increase any compensation or benefits, except in the ordinary course of business consistent with past practice,

or enter into or amend any employment agreement with any of its present or future officers or directors, except with new employees consistent with past practice, or (iv) adopt any new employee benefit plan (including any stock option, stock benefit or stock purchase plan) or amend (except as required by law) any existing employee benefit plan in any material respect, except for changes which are less favorable to participants in such plans;

(e) shall not (i) declare, set aside or pay any dividend or make any other distribution or payment with respect to any shares of its capital stock or (ii) redeem, purchase or otherwise acquire any shares of its capital stock or capital stock of any of its Subsidiaries, or make any commitment for any such action;

(f) shall not, and shall not permit any of its Subsidiaries to, sell, lease or otherwise dispose of any of its assets (including capital stock of Subsidiaries) that are material to the Company, individually or in the aggregate, except in the ordinary course of business;

(g) shall not, nor shall it permit any of its Subsidiaries to, agree in writing or otherwise to take any of the foregoing actions, and

(h) shall not take any action that is likely to delay materially or adversely affect the ability of any of the parties hereto (i) to obtain any consent, authorization, order or approval of any governmental commission, board or other regulatory body or (ii) to consummate the Merger.

#### Section 7.2 Meetings of Shareholders.

(a) The Company will take all action necessary in accordance with applicable law and its articles of incorporation and bylaws to convene a meeting of its shareholders as promptly as practicable to consider and vote upon the approval and adoption of this Agreement and the Merger.

(b) The Company, through the Special Committee and its Board of Directors, shall recommend approval of such matters subject to the determination by the Special Committee and its Board of Directors after consultation with their respective counsel that recommending approval of such matters would not be inconsistent with their respective fiduciary obligations. Additionally, the Board of Directors and the Special Committee may at any time prior to the Effective Time withdraw, modify, or change any recommendation and declaration regarding this Agreement or the Merger if in the opinion of the Special Committee after consultation with its counsel the failure to so withdraw, modify, or change its recommendation and declaration would be inconsistent with their respective fiduciary obligations.

#### Section 7.3. Proxy Statement.

(a) Each of the Company and Mergerco shall cooperate and promptly prepare and the Company shall file as soon as practicable with the Securities and Exchange Commission (the "SEC") under the Exchange Act a proxy statement with respect to the meeting of the

shareholders of the Company to approve and adopt this Agreement and the transactions contemplated hereby (the "Proxy Statement"). The respective parties will cause the Proxy Statement to comply as to form in all material respects with the applicable provisions of the Exchange Act and the rules and regulations promulgated thereunder, including Rule 13c-3. The Company will advise Mergerco, promptly after it receives notice thereof, of any request by the SEC for amendment of the Proxy Statement or comments thereon and responses thereto or requests by the SEC for additional information.

(b) The Company will use commercially reasonable efforts to cause the Proxy Statement to be mailed to its shareholders as promptly as practicable after the date hereof.

(c) Each of the Company and Mergerco agrees that the information provided by it for inclusion in the Proxy Statement and each amendment or supplement thereto, at the time of mailing thereof and at the time of the meeting of shareholders of the Company, (i) will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (ii) will comply as to form in all material respects with the provisions of the Exchange Act.

(d) Concurrently with the filing of the Proxy Statement, the Company and Mergerco shall file with the SEC a Rule 13e-3 Transaction Statement on Schedule 13E-3 ("Schedule 13E-3"), with respect to the Merger. Each of the parties hereto agrees to use its commercially reasonable efforts to cooperate and to provide each other with such information as any of such parties may reasonably request in connection with the preparation of the Schedule 13E-3. Each party hereto agrees promptly to supplement, update and correct any information provided by it for use in the Schedule 13E-3 if and to the extent that it is or shall have become incomplete, false or misleading.

Section 7.4. Expenses. If the Merger is not consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses. If the Merger is consummated, the Mergerco shall pay all costs and expenses incurred by both parties and the Buyer Group, other than the Consideration.

Section 7.5. Consents. Each of Mergerco and the Company shall cooperate, and use commercially reasonable efforts, to make all filings and obtain all licenses, permits, consents, approvals, authorizations, qualifications and orders of governmental authorities and other third parties necessary to consummate the transactions contemplated by this Agreement.

Section 7.6. Publicity. The parties will consult with each other and will mutually agree upon any press releases or public announcements pertaining to this Agreement or the transactions contemplated hereby and shall not issue any such press releases or make any such public announcements prior to such consultation and agreement, except as may be required by applicable law or by obligations pursuant to any listing agreement with any national securities exchange or the National Association of Securities Dealers Automated quotation system, in

which case the party proposing to issue such press release or make such public announcement shall consult in good faith with the other party before issuing any such press releases or making any such public announcements.

## ARTICLE VIII

### CONDITIONS

Section 8.1 Conditions to Each Party's Obligation to Effect the Merger The respective obligation of each party to effect the Merger shall be subject to the fulfillment at or prior to the Closing Date of the following conditions

(a) This Agreement and the Merger shall have been adopted and approved by the affirmative vote of holders of not less than two-thirds percent (66 2/3%) of the issued and outstanding shares of Company Common Stock entitled to vote thereon and two-thirds percent (66 2/3%) of the issued and outstanding shares of Common Stock of Mergerco;

(b) None of the parties hereto shall be subject to any decree, order or injunction of a court of competent jurisdiction, U.S. or foreign, which prohibits the consummation of the Merger; *provided, however*, that prior to invoking this condition each party agrees to use its commercially reasonable efforts to have any such decree, order or injunction lifted or vacated;

(c) No statute, rule or regulation shall have been enacted by any governmental authority which prohibits or makes unlawful the consummation of the Merger; and

(d) At the time of mailing of the Proxy Statement to the shareholders of the Company and at the Effective Time, Southwest Securities shall have orally reaffirmed the fairness opinion previously prepared and delivered by it to the Board of Directors of the Company and Southwest Securities shall not have withdrawn such opinion.

Section 8.2. Conditions to Obligation of the Company to Effect the Merger. The obligation of the Company to effect the Merger shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) Mergerco shall have performed in all material respects its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date and the representations and warranties of Mergerco contained in this Agreement and in any document delivered in connection herewith shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except for representations and warranties made as of a specified date, which need be true and correct in all material respects only as of the specified date), and the Company shall have received a certificate of Mergerco, executed on its behalf by its President or a Vice President of Mergerco, dated the Closing Date, certifying to such effect;

(b) At any time after the date of this Agreement, there shall not have been any event or occurrence that has had or is likely to have a Mergerco Material Adverse Effect; and

(c) The Special Committee shall not have withdrawn or materially modified its approval or recommendation of the Merger, or resolved to do so, or taken any action having the foregoing effect.

Section 8.3. Conditions to Obligation of Mergerco to Effect the Merger. The obligations of Mergerco to effect the Merger shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) The Company shall have performed in all material respects its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date and the representations and warranties of the Company contained in this Agreement and in any document delivered in connection herewith shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except for representations and warranties made as of a specified date, which need be true and correct in all material respects only as of the specified date), and Mergerco shall have received a certificate of the Company, executed on its behalf by its President or a Vice President of the Company, dated the Closing Date, certifying to such effect;

(b) At any time after the date of this Agreement, there shall not have been any event or occurrence that has had or is likely to have a Company Material Adverse Effect; and

(c) Dissenting Shares shall not exceed 1% or more of the outstanding shares of Company Common Stock.

## ARTICLE IX

### TERMINATION

Section 9.1. Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Effective Time by the mutual written consent of Mergerco and the Company.

Section 9.2. Termination by the Company or Mergerco. This Agreement may be terminated by the Company or Mergerco if:

(a) a meeting (including adjournments and postponements) of the Company's shareholders or Mergerco's shareholders for the purpose of obtaining the approvals required by Section 8.1(a) shall have been held and such shareholder approvals shall not have been obtained; or

(b) a court of competent jurisdiction (U.S. or foreign) or a U.S. or foreign governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise

prohibiting the Merger, and such order, decree, ruling or other action shall have become final and non-appealable, *provided, however*, that the party seeking to terminate this Agreement pursuant to this clause (b) shall have used commercially reasonable efforts to remove such injunction, order or decree.

**Section 9.3. Termination by the Company.** This Agreement may be terminated prior to the Effective Time, by action of the Board of Directors of the Company, if:

(a) (i) there has been a breach by Mergerco of any material representation, warranty, covenant or agreement set forth in this Agreement or if any representation or warranty of Mergerco shall have become materially untrue, in either case such that the conditions set forth in Section 8.2(a) would not be satisfied and (ii) such breach is not curable, or, if curable, is not cured within 30 days after written notice of such breach is given to Mergerco by the Company; *provided, however*, that the right to terminate this Agreement pursuant to this Section 9.3 shall not be available to the Company if it, at such time, is in material breach of any representation, warranty, covenant or agreement set forth in this Agreement such that the condition set forth in Section 8.3(a) shall not be satisfied, or

(b) the Special Committee or the Board of Directors of the Company determines, after consultation with outside legal counsel, that failure to do so would be inconsistent with the Board of Directors' or the Special Committee's fiduciary duties under applicable law.

**Section 9.4. Termination by Mergerco.** This Agreement may be terminated at any time prior to the Effective Time, by action of the Board of Directors of Mergerco, if:

(a) (i) there has been a breach by the Company of any material representation, warranty covenant or agreement set forth in this Agreement or if any representation or warranty of the Company shall have become materially untrue, in either case such that the conditions set forth in Section 8.3(a) would not be satisfied and (ii) such breach is not curable, or, if curable, is not cured within 30 days after written notice of such breach is given by Mergerco to the Company; *provided, however*, that the right to terminate this Agreement pursuant to this Section 9.4(a) shall not be available to Mergerco if it, at such time, is in material breach of any representation, warranty, covenant or agreement set forth in this Agreement such that the conditions set forth in Section 8.2(a) shall not be satisfied; or

(b) the Board of Directors of the Company or the Special Committee shall have withdrawn or materially modified, in a manner adverse to Mergerco, its approval or recommendation of the Merger, or resolved to do so, or taken any action having the foregoing effect.

**Section 9.5. Effect of Termination.** In the event of termination of this Agreement and the abandonment of the Merger pursuant to this Article IX, all obligations of the parties hereto shall terminate, except the obligations of the parties pursuant to this Section 9.5 and Section 7.4 and except for the provisions of Sections 10.3, 10.4, 10.6, 10.8, 10.9, and 10.11; *provided that*

nothing herein shall relieve any party from any liability for any willful and material breach by such party of any of its covenants or agreements set forth in this Agreement and all rights and remedies of such nonbreaching party under this Agreement in the case of such a willful and material breach, at law or in equity, shall be preserved.

Section 9.6. Extension, Waiver At any time prior to the Effective Time, each party may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party and, in the case of the Company, only if authorized by the Special Committee.

## ARTICLE X

### GENERAL PROVISIONS

Section 10.1. Nonsurvival of Representations, Warranties and Agreements All representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall not survive the Merger; *provided however*, that the agreements contained in Article IV, in Section 7.4 and this Article X shall survive the Merger.

Section 10.2. Notices. Any notice required to be given hereunder shall be sufficient if in writing, and sent by facsimile transmission or by courier service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), addressed as follows:

if to the Company:

Neutral Posture Ergonomics, Inc.  
3904 N. Texas Avenue  
Bryan, Texas 77803  
Attention: President  
Facsimile: (979) 778-0408

with a copy to.

Greg R. Samuel, Esq.  
Haynes and Boone, LLP  
901 Main Street, Suite 3100  
Dallas, Texas 75202  
Facsimile: (214) 200-0577

and to:

Sally A. Schreiber, Esq.  
Munsch Hardt Kopf & Harr, PC  
4000 Fountain Place  
1445 Ross Avenue  
Dallas, Texas 75202  
Facsimile: (214) 978-4323

if to Mergerco.

Neutral Posture Ergonomics Merger Co., Inc.  
3904 N. Texas Avenue  
Bryan, Texas 77803  
Attention: President  
Facsimile (979) 778-9389

with a copy to:

Larry Schoenbrun, Esq.  
Gardere Wynne Sewell LLP  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201  
Facsimile: (214) 999-3703

or to such other address as any party shall specify by written notice so given, and such notice shall be deemed to have been delivered as of the date so telecommunicated, personally delivered or mailed.

Section 10.3. Assignment; Binding Effect; Benefit. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, except for the provisions of Article IV, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective heirs, successors, executors, administrators and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The provisions of Article IV may be enforced by the beneficiaries thereof.

Section 10.4. Entire Agreement. This Agreement and any documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the

parties with respect thereto. No addition to or modification of any provision of this Agreement shall be binding upon any party hereto unless made in writing and signed by all parties hereto.

Section 10.5 Amendments This Agreement may be amended by the parties hereto (in the case of the Company, only if authorized by the Special Committee), at any time before or after approval of matters presented in connection with the Merger by the shareholders of the Company, but after any such shareholder approval, no amendment shall be made which by law requires the further approval of shareholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

Section 10.6. Governing Law This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to its rules of conflict of laws. Each of Mergerco and the Company hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Texas and of the United States of America located in the State of Texas (the "Texas Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives any objection to the laying of venue of any such litigation in the Texas Courts and agrees not to plead or claim in any Texas Court that such litigation brought therein has been brought in an inconvenient forum.

Section 10.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

Section 10.8. Headings. Headings of the Articles and Sections of this Agreement are for the convenience of the parties only, and shall be given no substantive or interpretative effect whatsoever.

Section 10.9. Interpretation In this Agreement:

(a) Unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, and words denoting any gender shall include all genders and words denoting natural persons shall include corporations and partnerships and vice versa.

(b) "Company Material Adverse Effect" shall mean a material adverse effect or change on (a) the business or financial condition of the Company and its Subsidiaries on a consolidated basis, except for such changes or effects in general economic, capital market, regulatory or political conditions or changes that affect generally the office furniture manufacturing industry, or (b) the ability of the Company to consummate the transactions contemplated by this Agreement or fulfill the conditions to Closing.

(c) "Mergerco Material Adverse Effect" shall mean a material adverse effect or change on (a) the business or financial condition of Mergerco, except for such changes or effects in general economic, capital market, regulatory or political conditions or changes that affect generally the office furniture manufacturing industry, or (b) the ability of Mergerco to consummate the transactions contemplated by this Agreement or fulfill the conditions to Closing

(d) "Subsidiary," when used with respect to any party, shall mean any corporation or other organization, whether incorporated or unincorporated, of which such party directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization, or any organization of which such party is a general partner.

(e) "Family" shall mean such individual's spouse, any other natural person who is related to the individual or the individual's spouse within the second degree, and any other natural person who resides with such individual

Section 10.10. Waivers Except as provided in this Agreement, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

Section 10.11. Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broadly as is enforceable.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused the same to be duly delivered on their behalf on the day and year first written above

NEUTRAL POSTURE ERGONOMICS, INC.

By: \_\_\_\_\_  
Thomas G. Peterson, President

NEUTRAL POSTURE ERGONOMICS MERGER  
CO., INC.

By: \_\_\_\_\_  
Rebecca E Boenigk, Chairman of the Board

**EXHIBIT A**  
**THE BUYER GROUP**

<u>Member of Group</u>	<u>Number of Shares of Common Stock of the Company</u>
Mark Benden	6,100
Rebecca Boenigk	897,610
Bobby Boenigk, as custodian under the UGMA for Rachel E. Boenigk	9,450
Bobby Boenigk, as custodian under the UGMA for Ryan Alan Boenigk	9,450
Catherine Coker	97,195
Catherine Coker, as custodian under the UGMA for Cannon Todd Coker	2,350
Jaye Congleton	809,740
Jaye Congleton, as custodian under the UGMA for Chase W. Congleton	2,350
Jaye Congleton, as custodian under the UGMA for Claire D. Congleton	2,350
David Ebner	60,100
Gregory Katt	5,350
Thomas Peterson	100,000
Michele Zinke	25,838