



GE Corporate Tax

July 9, 2014

Administrative Hearing Officer
ATTN: Sylvia Ware
600 Beacon Parkway West Suite 900
Birmingham, Al 35209

RE: Denial of Refund Request
AP Fabrications, LLC – Account 267205
General Electric Capital Corporation – Account 007333
GE Credit Corporation of Tennessee – Account 084795
Jurisdiction: Athens
Tax Periods: May and June 2011
Amount Requested: \$13,333.65

ATTACHED DOCUMENTS:

1. Protest
2. RDS Original Petition
3. AP Fabrication Letter Dated April 21,2014
4. Aviagen Purchase Order
5. Purchase Order Assignment and Consent
6. GE Capital Assignment Notice Dated June 29, 2011
7. Assignment (POAC)
8. Supplier Consent and Agreement
9. Machine Tools Equipment Schedule
10. AP Fabrications Invoice Summary Schedule
11. AP Fabrications Invoices & Aviagen copy of check payment
12. AP Fabrications RDS May & June 2011 Sales Tax Returns
13. GE Credit Corp of Tennessee Sample Aviagen Invoices
14. GE Credit Corp of Tennessee Athens RDS Sales Tax Returns



GE Corporate Tax

July 9, 2014

Administrative Hearing Officer
ATTN: Sylvia Ware
600 Beacon Parkway West Suite 900
Birmingham, Al 35209

RE: Denial of Refund Request
AP Fabrications, LLC – Account 267205
General Electric Capital Corporation – Account 007333
GE Credit Corporation of Tennessee – Account 084795
Jurisdiction: Athens
Tax Periods: May and June 2011
Amount Requested: \$13,333.65

Dear Administrative Hearing Officer:

AP Fabrications, LLC and General Electric Capital Corporation (Petitioner) hereby respectfully appeal the denial notice dated May 14, 2014 from Revenue Discovery Systems (RDS). (See attached notice).

1. STATEMENT OF PROTEST:

AP Fabrications, LLC and General Electric Capital Corporation hereby disagree with the denial of the \$13,333.56 refund requested and appeal to the Administrative Hearing Officer for re-determination.

2. NAME AND ADDRESS OF TAXPAYER:

General Electric Capital Corporation
Attn: John Adejunmobi
4211 Metro Parkway-MS 1A
Ft. Myers, Florida 33916

AP Fabrications, LLC
Attn: Steven Danforth
801 E 2nd Street
Stuttgart, AR 72160

3. RELIEF SOUGHT:

Taxpayer submits that the denial of the refund requested on the overpayment of sales tax to the city of Athens was erroneous and should be reversed with approval for the full amount of sales tax requested consistent with the explanations below.

4. STATEMENT OF FACTS

AP Fabrications, LLC and General Electric Capital Corporation filed a joint RDS Refund Petition submitted October 7, 2013, claiming a refund of \$13,333.65 for overpayment of sales tax. A letter from RDS dated May 14, 2014 and received on June 16, 2014 stated refund request denied on the basis that Aviagen did not have a tax exempt certificate and taxes charged, paid and remitted by AP Fabrications, LLC was due.

5. ARGUMENT

AP Fabrications, LLC contracted with Aviagen, Inc., to provide equipment and installation of a grain storage silo at the Aviagen's feed mill in Athens Alabama. Aviagen, Inc. secured financing for the equipment (purchase) and installation from General Electric Capital Corporation. Aviagen, Inc. assigned all right, title and interest to the purchase order submitted to AP Fabrications, LLC to General Electric Capital Corporation (see assignment agreement). The assignment of the purchase order made General Electric Capital Corporation the legal owner of all equipment and installation of the grain silo.


Thereafter, General Electric Capital Corporation assigned all right, title and interest to the purchase order to GE Credit Corporation of Tennessee (see assignment agreement). GE Credit Corporation of Tennessee and Aviagen entered into a lease agreement on the completed grain silo. (See machine tools schedule). GE Credit Corporation of Tennessee on each monthly rental payment bills collects and remits rental tax to the city of Athens, (See customer invoices).


AP Fabrications, LLC erroneously invoiced Aviagen for the equipment and installation of the grain silo (see invoices) instead of invoicing General Electric Capital Corporation. AP Fabrications LLC collected sales tax on the invoiced amounts and remitted it to the city of Athens on their monthly sales tax returns. (See AP Fabrications, LLC letter dated April 21, 2014). The remittance by AP Fabrications and the remittance of rental tax on the monthly lease payments by GE Credit Corporation of Tennessee results in overpayment of sales tax to the city of Athens.

The Revenue Discovery System, RDS, is in possession of documentation supporting the petition for refund and we have attached additional documentation supporting the appeal. AP Fabrications LLC and General Electric Capital Corporation both respectfully reserve the right to produce additional materials, further explain its position and to advance additional arguments.

If you should have any questions or need any additional assistance please contact me at (239) 275-2813

Respectfully submitted,

By: 
John Adejunmobi
Senior Tax Analyst
General Electric Capital Corporation

By: 
Steven Danforth
Co-Owner
AP Fabrications, LLC

Aviagen Lease Agreement 8468730002

TIMELINE

7/29/2010 – Master Lease Agreement between GE Capital Corporation and Aviagen Inc. *- NEED COPY!*

2/22/2011 – Aviagen Inc., issued purchase order to AP Fabrication for Corn Storage Tanks in the amount of \$675,794.00

2/22/2011 – Aviagen Inc., issued purchase order to Goss Electric for Grain Storage Addition in the amount of \$80,000.00

A 3/1/2011 – GE Capital Corporation assigned all rights, title and interest to AP Fabrication purchase order for Corn Storage Tanks in the amount of \$675,794.00

3/2/2011 - GE Capital Corporation assigned all rights, title and interest to Goss Electric purchase order for Grain Storage Addition in the amount of \$80,000.00

3/7/2011 – 6/30/2011 AP Fabrication submitted invoices with sales tax to Aviagen Inc., in error

3/31/2011 – 7/31/2011 Goss Electric submitted invoices to Aviagen Inc., in error

A 3/14/2011 – 8/19/2011 – Aviagen Inc., submitted payments on invoices to AP Fabrication & Goss Electric in error

*WHY
AVIAGEN
MADE ALL
PAYMENTS IF
HAD A LEASE IN
PLACE?!*

7/20/2011 – GE Credit Corporation of Tennessee assigned all rights, title and interest to AP Fabrication's purchase order for Corn Storage Tanks in the amount of \$675,794.00

7/20/2011 GE Credit Corporation of Tennessee assigned all rights, title and interest to Goss Electric's purchase order for Grain Storage Addition in the amount of \$80,000.00

7/20/2011 GE Credit Corporation of Tennessee reimbursed Aviagen for erroneous payment to AP Fabrication and Goss Electric in the amount of \$334,016.63

8/24/2011 GE Credit Corporation of Tennessee reimbursed Aviagen for erroneous payment to AP Fabrication and Goss Electric in the amount of \$263,446.07

11/9/2011 GE Credit Corporation of Tennessee reimbursed Aviagen for erroneous payment to AP Fabrication and Goss Electric in the amount of \$156,118.80

11/9/2011 – Machine Tool Schedule Lease agreement signed between GE Credit Corporation of Tennessee and Aviagen Inc.

RDS

revenue discovery systems

600 Beacon Parkway West Suite 900
Birmingham, AL 35209

(800) 556-7274 • (205) 324.0088 • (205) 423-4099 fax

www.revds.com

May 14, 2014

AP Fabrications
801 East 2nd Street
Stuttgart, AZ 72160

Account: 267205
Refund Request Details:
Jurisdiction(s): Athens
Tax Period(s): May and June 2011
Amount of Request: \$13,333.65

Dear Taxpayer,

We are unable to determine if a refund is due based on the information provided with your petition.

_____ Interest and Penalties are not refundable.

_____ Original tax payment(s) not found in payment history.

_____ Taxes must be refunded to paying customer and this criteria cannot be met.

_____ Exemptions stated do not apply.

Other: Aviagen does not have a tax exempt certificate. Taxes were charged, paid and remitted as required. Refund is denied.

Best Regards,
Joyce Ashley
Refunds
Revenue Discovery Systems (RDS)
Direct: 800-556-7274 Ext 34427
Fax: (205) 423-4099
jashley@revds.com

Mailed 10-7-13

RDS
revenue discovery systems

RDS Refund Petition

RDS
Attn: Refunds
2317 3rd Ave N
Suite 200
Birmingham, AL 35203

Refund Petition

Joint Direct

Note: Separate petitions are required for each type of tax and for each city or county. (Instructions on Back)

The undersigned hereby makes application for refund of (\$ 13,333.65)
Thirteen thousand three hundred thirty-three dollars and sixty-four cents Dollars. Taxes paid by said undersigned to the Tax Trust Account for (city or county) Athens for the period(s) May 2011 and June 2011, which amount was erroneously paid or paid in excess of the amount due or was paid through mistake of fact or law.

Explain in detail the reasons for refund claim (attach additional pages if necessary):

Please see "Attachment A"

Signatures: A joint petition must bear the signatures of both the seller and the consumer-purchaser. If a petitioner is an individual, the individual must sign. If a petition is a partnership or limited liability partnership, a partner must sign. If a petition is a corporation, an officer of the corporation must sign. If a petition is a limited liability company, a member must sign. /

AP Fabrications, LLC
Petitioner's Name (Seller)
6007188744 (870) 673-8504
RDS Account # Telephone #
[Signature]
Petitioner's Signature
Steve@apinnovations.com
Petitioner's Email Address
801 E 2nd St.
Mailing Address
Stratford AR 72160
City State Zip

Date Signed

General Electric Capital Corporation
Petitioner's Name (Consumer-Purchaser)
6800 08285 203-749-2153
RDS Account # Telephone #
Emily Burke (SUD) Tax Manager
Petitioner's Signature/Title
Emily.Burke@ge.com
Petitioner's Email Address
10 Riverview Drive
Mailing Address
Danbury, CT 06810
City State Zip

Date Signed



301 E 2nd Street, Stuttgart AR 72160 Phone: (870) 673-8504 Fax: (870) 673-8505

April 21, 2014

AP Fabrications, LLC received purchase order PO16665 from Aviagen Inc. and proceeded to set-up the customer based on who issued the PO. We overlooked the Consent "POAC" stating General Electrical Capital Corporation would be leasing equipment and had rights to the corn storage system. Therefore, the invoices we incorrectly made out to Aviagen Inc when they should have been made out to General Electrical Capital Corporation.

A handwritten signature in black ink, appearing to read 'M. O. M.', is located below the text.

Purchase Order

Avlagen, Inc.

5015 Bradford Drive
Huntsville, AL 35805
USA

PO #: PO16665

PO Date: 2/22/2011

Requisition #: 22082

Reference: Corn Storage Tanks
AP Fabrications

Vendor: AP FABRICATIONS, LLC

801 E 2ND STREET
STUTT GART, AR 72160
USA

Ship To: AL FEED MILL
RICHARD OBERMEYER
1813 WILKINSON STREET
ATHEMS, AL 35611
USA

Contact:

Phone: (870) 673-8504
Fax: (870) 673-8505

Attention: becky hill
Phone: (256) 771-1518
Fax:

Terms: Net 30

Email: bhll@avlagen.com

Ship Method: Local Delivery

#	Item Description	Item Key	GL Account	Ship Date	Unit Price	QTY	UOM	Total
1	Corn Storage Tanks	CORN STORAGE TANKS	19070-00-603-1150	2/22/2011	\$675,794.0000	1.00000	Each	\$675,794.00

Requested By: Becky Hill
Approved By: Richard Obermeyer

Date:
2/22/2011
2/22/2011

SUB TOTAL: \$675,794.00
TAX: \$0.00
ORDER TOTAL: \$675,794.00

By: *Becky Hill*

Date: 2/22/2011

PURCHASE ORDER ASSIGNMENT AND CONSENT

3/1/2011 THIS PURCHASE ORDER ASSIGNMENT AND CONSENT ("Assignment") is dated as of _____ by and between General Electric Capital Corporation (together with its successors and assigns, if any, "Lessor") and Aviagen Inc. ("Lessee"). All capitalized terms used herein which are not otherwise defined shall have the meaning ascribed to them in the Lease (as defined below).

WITNESSETH:

WHEREAS, Lessee desires to lease from Lessor certain equipment ("Equipment"), pursuant to a Schedule entered into, or which may hereafter be entered into, by and between Lessee and Lessor (the "Schedule") incorporating the terms of that certain Master Lease Agreement entered into, or which may hereafter be entered into, by and between Lessee and General Electric Capital Corporation (the "Master Agreement") and pursuant to all other documents relating thereto as Lessor requires, including but not limited to a Certificate of Acceptance, all in form and substance acceptable to Lessor, in its sole discretion (the Schedule, and the terms of the Master Agreement incorporated therein by reference and all schedules, addenda, amendments and attachments thereto and all such other related documents and certificates, being hereinafter referred to collectively as the "Lease"); and

WHEREAS, to induce Lessor to Lease the Equipment to Lessee, Lessee desires to assign, and Lessor is willing to acquire (subject to the terms hereof), certain of Lessee's rights and interests under the purchase order(s), agreement(s) and/or document(s) (copies of which are attached hereto as Exhibit A and hereinafter referred to as the "Purchase Orders") Lessee has heretofore issued to AP Fabrications, L.L.C. the supplier of such Equipment ("Supplier").

NOW THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

SECTION 1. ASSIGNMENT.

(a) Lessee does hereby assign and set over to Lessor all of Lessee's rights and interests in and to such Equipment and the Purchase Orders as the same relates to such Equipment including, without limitation, in such assignment (i) the right to purchase the Equipment pursuant to the Purchase Orders, and the right to take title to such Equipment and to be named the purchaser in the bill of sale for such Equipment. (ii) all claims for damages in respect of the Equipment purchased by Lessor arising as a result of any default by the Supplier thereof under the Purchase Orders, including, without limitation, all warranty and indemnity provisions contained in such Purchase Orders, and all claims arising thereunder, in respect of such Equipment, and (iii) any and all rights of Lessee to compel performance of the terms of such Purchase Orders. Lessee agrees not to make, or agree to make, any changes to the Equipment or the Purchase Orders without the prior written consent of the Lessor. **LESSEE ACKNOWLEDGES THAT LESSOR MAY ASSIGN ITS RIGHTS AND INTERESTS UNDER THIS ASSIGNMENT TO ANY ENTITY WHO DIRECTLY OR BY ASSIGNMENT IS OR BECOMES LESSOR UNDER THE LEASE (INCLUDING WITHOUT LIMITATION, TO ANY DIRECT OR INDIRECT PARENT, SUBSIDIARY OR SISTER ENTITY).**

(b) Notwithstanding the foregoing, so long as no default, Event of Default or event which, with notice and the lapse of time or both, would constitute a default under the Lease has occurred and is continuing, Lessee shall be, and is hereby authorized on behalf of Lessor in the name of Lessee to exercise and is entitled to all rights and powers of the purchaser under the Purchase Orders with respect to such Equipment and to retain any recovery or benefit resulting from the enforcement of any warranty, indemnity or right to damages under the Purchase Orders or otherwise existing against the Supplier, including without limitation the rights and claims described in subsection (a)(i), (a)(ii), and (a)(iii) above, **except that in all instances only Lessor shall be entitled to receive from Supplier any and all refunds or returns of, or credits with respect to, the purchase price of the Equipment and any amounts paid towards such purchase price.**

(c) Lessee acknowledges and agrees to the modification of the Purchase Orders as described in the Supplier Consent and Agreement attached hereto ("Supplier Consent"), and agrees that upon any assumption by Lessor of the rights and obligations of Lessee under the Purchase Orders as described therein, Lessee shall have no further rights under such Purchase Orders, but Lessee shall remain fully obligated thereunder. Lessee further acknowledges and agrees that receipt by Lessor of a notice from Supplier of the occurrence of any breach, default or other event described in the Supplier Consent shall constitute a default by Lessee under the Lease.

(d) **NOTWITHSTANDING ANY OTHER PRIOR OR FUTURE COMMUNICATION OR DOCUMENT, THIS ASSIGNMENT DOES NOT INDICATE A COMMITMENT BY LESSOR TO PURCHASE ANY OF THE EQUIPMENT OR ENTER INTO ANY LEASE REGARDING THE EQUIPMENT AND LESSOR'S OBLIGATIONS HEREUNDER ARE SUBJECT TO THE COMPLETION OF AND/OR COMPLIANCE WITH EACH OF THE FOLLOWING IN FORM AND SUBSTANCE SATISFACTORY TO LESSOR IN ITS SOLE DISCRETION: THE TERMS HEREOF (INCLUDING WITHOUT LIMITATION, SECTION 2 HEREOF); THE CONDITIONS SET FORTH IN THE SUPPLIER CONSENT & AGREEMENT RELATING HERETO; LESSOR'S CREDIT, INVESTMENT, PRICING AND OTHER INTERNAL APPROVALS;**

LEASE DOCUMENTATION AND SECURITY; AND THE LESSOR'S CONDITIONS PRECEDENT RELATING TO THE LEASE. SIMILARLY, THE PURCHASE OR LEASE BY LESSOR OF ANY ONE ITEM OF EQUIPMENT, OR A DECISION BY LESSOR TO ENTER INTO A LEASE WITH RESPECT TO ANY ITEM OF EQUIPMENT, DOES NOT INDICATE ANY COMMITMENT WITH RESPECT TO PURCHASING OR ENTERING INTO ANY TRANSACTION WITH RESPECT TO ANY OTHER ITEM OF EQUIPMENT.

SECTION 2. CONTINUING LIABILITY OF LESSEE; LEASE ACCEPTANCE.

It is expressly agreed that anything herein or therein contained to the contrary notwithstanding: (a) Lessee shall at all times remain liable to the Supplier to perform all of the duties and obligations of the purchaser under the Purchase Orders to the same extent as if this Assignment had not been executed, (b) the execution of this Assignment shall not modify any contractual rights of the Supplier under the Purchase Orders and the liabilities of the Supplier under the Purchase Orders shall be to the same extent and continue as if this Assignment had not been executed, (c) the exercise by the Lessor of any of the rights assigned hereunder shall not release Lessee from any of its duties or obligation or liability under the Purchase Orders; and (d) Lessor shall NOT have any obligation or liability under the Purchase Orders by reason of, or arising out of, this Assignment or be obligated to (i) enter into any Lease or any Schedule, (ii) perform any of the obligations or duties of Lessee under the Purchase Orders, including but not limited to any obligation to pay the purchase price of the Equipment (other than under the terms and conditions of a Lease), (iii) make any inquiry into the sufficiency of or authorization for any payment received by any Supplier or (iv) present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder. Lessor's obligations hereunder and with respect to any item of Equipment under the Purchase Orders are further subject to completion of Lease Acceptance with respect to such item of Equipment. As used herein, "Lease Acceptance" shall have occurred with respect to an item of Equipment when: a) Lessee has duly executed and delivered to Lessor, Lessor's form of Certificate of Acceptance (which either may be embedded into the corresponding Schedule or in the form of a separate instrument) and all other lease and related transactional documentation with respect to such item of Equipment and the lease thereof from Lessor; b) Lessor has obtained full credit, investment, pricing and other internal approvals with respect to the lease thereof to the Lessee; c) Lessor's related conditions precedent and credit and pricing approval conditions have been fully satisfied; and d) no default exists under the relevant Master Agreement and any Schedule thereunder; each of a)-d) to be in form and substance satisfactory to Lessor in its sole discretion.

SECTION 3. COMPLETE AGREEMENT; JURY TRIAL WAIVER; GOVERNING LAW AND JURISDICTION; COUNTERPARTS.

(a) **Complete Agreement.** This Assignment incorporates all representations, promises and statements made in connection with the subject matter hereof and the negotiation thereof and no such representation, promise or statement not contained herein shall be binding on the parties. The conditions set forth herein may not be varied or altered nor may any provisions hereof waived, except by agreement in writing executed by duly authorized agents of both parties. Any conditions appearing on Supplier's invoice which may conflict with the conditions set forth in this Assignment shall be deemed omitted, modified or altered to conform hereto, unless such conditions, modifications, or alterations are agreed to in writing by both parties as aforesaid. The conditions set forth in this Assignment shall also be binding upon and inure to the benefit of the respective heirs, administrators, executors, successors, legal representatives and assigns of the parties to this Assignment.

(b) **Jury Trial Waiver.** The parties to this Assignment hereby unconditionally waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of, directly or indirectly, this Assignment, any of the related documents, any dealings between them relating to the subject matter of this transaction or any related transactions, and/or the relationship that is being established between them. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court (including, without limitation, contract claims, tort claims, breach of duty claims). This waiver is irrevocable, meaning that it may not be modified either orally or in writing and the waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this Assignment, any related documents, or to any other documents or agreements relating to this transaction or any related transaction. In the event of litigation, this Assignment may be filed as a written consent to a trial by the court.

(c) **Governing Law and Jurisdiction.** **IT IS SPECIFICALLY AGREED BY THE PARTIES THAT THIS ASSIGNMENT AND THE GENERAL CONDITIONS SET FORTH HEREIN SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF CONNECTICUT, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION AND VENUE OF THE COURTS OF CONNECTICUT, WHETHER STATE OR FEDERAL.**

(d) Lessee hereby acknowledges and agrees to the matters set forth in the Supplier's Consent and Agreement related hereto. This Assignment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page of this Assignment or any delivery contemplated hereby by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart thereof.

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed as of the date first above written by its duly authorized representative.

LESSOR:

General Electric Capital Corporation

By:



Name:

Mark E. Frankel


Title:

Contract Analyst

LESSEE:

Aviagen Inc.

By:



Name:

Keith N. Lewis

Title:

Vice President of Finance

GE Capital
Corporate Finance - East Region
10 Riverview Drive
Danbury, CT 06810
T: 203-749-6000

Date: June 29, 2011

To: Aviagen Inc.
5015 Bradford Drive NW Cummings Research Park
Huntsville, AL 35805
Attn.: Keith Lewis

AP Fabrications, LLC
801 E. 2nd Street
Stuttgart, AR 72160
Attn.: Michael Shook

Re: Notice of Assignment regarding Purchase Order Assignment and Consent ("POAC", copy attached as Exhibit A) between General Electric Capital Corporation and Aviagen Inc. covering Aviagen Purchase Order Number P016665, issued to AP Fabrications, LLC in the amount of \$675,794.00

Dear Sir,

Each capitalized term used but not defined in this Notice of Assignment have the meaning given such term in the POAC.

Pursuant to a certain Interim Finance Agreement dated 7/20/2011, between General Electric Capital Corporation as lender and Aviagen Inc. as borrower (the "Interim Finance Agreement") General Electric Credit Corporation of Tennessee has agreed, subject to the terms and conditions contained therein, herein and under the Lease, to purchase the Equipment from AP Fabrications, LLC in order to lease the same to Aviagen, Inc. pursuant to the Lease and General Electric Capital Corporation has agreed subject to the terms of the Interim Finance Agreement, to make certain "progress payments" required by AP Fabrications, LLC towards the purchase price of the Equipment prior to Aviagen Inc.'s acceptance of the Equipment under the Lease.

In order to facilitate General Electric Credit Corporation of Tennessee's purchase of the Equipment, we hereby give you notice that General Electric Capital Corporation has assigned all of its rights and interests under the POAC to:

General Electric Credit Corporation of Tennessee
10 Riverview Drive, Danbury, CT 06810
Federal Tax ID No.: 060876201

Please ensure that any invoice(s) and (as the case may be) bills of sale reflect General Electric Credit Corporation of Tennessee as the purchaser of the Equipment.

This Notice of Assignment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page of this Notice of Assignment or any delivery contemplated hereby by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart thereof.

Thank you

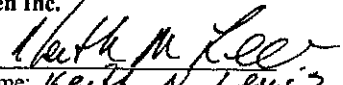
Very truly yours,

General Electric Capital Corporation

By: 
Name: **Mark E. Frankel**
Title: **Contract Analyst**
Telephone No.: **203-749-6000**

Agreed and Acknowledged:


Aviagen Inc.

By: 
Name: **Keith N. Lewis**
Title: **VP of Finance**
Telephone No.: **256 890 3807**

AP Fabrications, LLC.

By: _____
Name:
Title:
Telephone No.:

General Electric Credit Corporation of Tennessee

By: 
Name: **Mark E. Frankel**
Title: **Contract Analyst**
Telephone No.: **203-749-6000**

Please ensure that any invoice(s) and (as the case may be) bills of sale reflect General Electric Credit Corporation of Tennessee as the purchaser of the Equipment.

This Notice of Assignment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page of this Notice of Assignment or any delivery contemplated hereby by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart thereof.

Thank you

Very truly yours,

General Electric Capital Corporation

By: _____
Name:
Title:
Telephone No.:

Agreed and Acknowledged:

Aviagen Inc.

By: Keith M. Lewis
Name: Keith M. Lewis
Title: VP of Finance
Telephone No.: 256 890 3807

AP Fabrications, LLC.

By: Michael O'Shaughnessy
Name: Michael O'Shaughnessy
Title: owner
Telephone No.: 501-516-5735

General Electric Credit Corporation of Tennessee

By: _____
Name:
Title:
Telephone No.:

ASSIGNMENT (POAC)

KNOW ALL PERSONS BY THESE PRESENTS:

That General Electric Capital Corporation (the "Assignor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby transfer, assign and convey to General Electric Credit Corporation of Tennessee (the "Assignee"), all of Assignor's right, title and interest in and to the Purchase Order Assignment and Consent described below (the "Contract"),

Description of Contract

<u>Customer/Obligor</u>	<u>Corporate Finance – East Region Account Number</u>	<u>Contract</u>
Aviagen Inc.	8468730-002	Purchase Order Assignment and Consent ("POAC") between General Electric Capital Corporation and Aviagen Inc. covering Purchase Order #PO16665, issued by Aviagen Inc. to AP Fabrications, LLC in the amount of \$675,794.00)

From and after the date hereof, upon the request of Assignee, Assignor shall duly execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required to convey to and vest in Assignee and protect its right, title and interest in the Contract transferred, assigned and conveyed pursuant to this Assignment and, as may be appropriate, otherwise to carry out the transactions contemplated hereby.

This Assignment constitutes a sale of one hundred percent (100%) of Assignor's right, title and interest in the Contract and shall in no way be construed as an extension of credit by Assignor to Assignee.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed by its duly authorized officer effective as of this 20th day of JULY, 2011.

General Electric Capital Corporation

By: Mark E. Frankel

Name: Mark E. Frankel

Title: Authorized Signatory / Contract Analyst

SUPPLIER CONSENT AND AGREEMENT

Reference is hereby made to (i) the Purchase Order Assignment and Consent dated as of 3/1/2011 (the "Assignment Agreement") between General Electric Capital Corporation (together with its successors and assigns, if any, "Lessor") and AviaGen Inc. ("Lessee"), and (ii) the Purchase Orders (as defined in the Assignment Agreement) between Lessee and the undersigned, AP Fabrications, LLC ("Supplier"). All terms used in this Supplier Consent and Agreement ("Supplier Consent") which are not otherwise defined shall have the meaning ascribed to them in the Assignment Agreement.

In consideration of the mutual promises and agreements made by Lessor and Lessee in the Assignment Agreement, Supplier hereby consents to the Assignment Agreement and agrees not to assert any claims against either Lessor or Lessee inconsistent with such Assignment Agreement. Supplier further agrees that the Purchase Order is hereby amended as necessary to provide as follows:

(a) Upon the occurrence of any breach or default by Lessee under the Purchase Order or the occurrence of any other event which gives Supplier the right to terminate the Purchase Order, Supplier shall, prior to terminating the Purchase Order or exercising any of its other remedies under the Purchase Order, give Lessor written notice of such breach, default or other event (the "Notice"), whereupon Lessor shall have the right (but not the obligation) to either (i) cure any such breach or default within the fifteen (15) days after Lessor's receipt of such Notice, or (ii) assume all of Lessee's rights and obligations under the Purchase Order, and become the purchaser thereunder, by delivering written notice of Lessor's exercise of such right to Supplier within fifteen (15) days after receipt of the Notice.

(b) Unless Lessor has otherwise taken title to the Equipment pursuant to Section (a)(ii) above, title to and risk of loss of an item of Equipment shall pass to Lessor upon completion of Lease Acceptance for such item of Equipment whereupon Lessor shall acquire good title to such item of Equipment free from all liens, claims and encumbrances of any kind whatsoever (subject to (c) below) and Supplier shall be deemed to have provided a representation as to the same.

(c) To the extent that the Purchase Order grants a lien or other charge in favor of Supplier in or on an item of Equipment, Supplier hereby agrees that each such lien and/or charge is limited to a lien and/or charge on such item of Equipment acquired by Lessor from Supplier pursuant to the Purchase Order to secure all or part of the purchase price thereof only ("Purchase Money Lien"). Supplier hereby agrees that such Purchase Money Lien shall be automatically deemed released upon payment to Supplier of the purchase price with respect to such item of Equipment in accordance with the relevant Purchase Order. Supplier hereby waives and discharges any other lien or charge in or upon the Equipment or otherwise granted by the Purchase Order or by operation of law and represents and warrants that other than any Purchase Money Lien, there is no lien, claim or encumbrance of any kind whatsoever in or on the Equipment. Supplier further agrees to execute such documents as Lessor may request evidencing such release of any such lien or charge and the conveyance to Lessor of good title to the Equipment.

(d) Supplier agrees that on and after the date this Supplier Consent is executed it will not make any addition to or delete any items from, or make any modifications with respect to the specifications of the Equipment referred to in the Assignment Agreement and Purchase Order; or allow any material amendments to be made to the Purchase Order without the prior written consent of both Lessor and Lessee.

(e) Supplier represents that the Equipment has been accurately labeled, consistent with the requirements of 40 CFR Part 82 Subpart E, with respect to products manufactured with a controlled (ozone-depleting) substance.

SUPPLIER ACKNOWLEDGES THAT LESSOR MAY ASSIGN ITS RIGHTS AND INTERESTS UNDER THE ASSIGNMENT AGREEMENT TO ANY ENTITY WHO DIRECTLY OR BY ASSIGNMENT IS OR BECOMES LESSOR UNDER THE LEASE (INCLUDING WITHOUT LIMITATION, TO ANY DIRECT OR INDIRECT PARENT, SUBSIDIARY OR SISTER ENTITY).

It is the sole responsibility of Supplier, and not Lessor or Lessee to pay, and perform any contractual or other obligations as between Supplier and any third party sub-contractors of Supplier.

This Supplier Consent and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page of this Supplier Consent or any delivery contemplated hereby by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart thereof.

IN WITNESS WHEREOF, the undersigned has caused this Supplier Consent to be executed as of the date set forth below by its duly authorized representative.

SUPPLIER:

AP Fabrications, LLC

By: Michael D. Shook

Name: Michael D. Shook

Title: CO-owner

Date: 3/1/2011