

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

JOHNSON CONTROLS	)	
TECHNOLOGY COMPANY and AIR	)	
DISTRIBUTION TECHNOLOGIES IP,	)	
LLC	)	Civil Action No.
	)	1:20-cv-03692-LMM
Plaintiffs,	)	
	)	
v.	)	
	)	
PRICE INDUSTRIES INC. and PRICE	)	
INDUSTRIES LIMITED	)	
	)	
Defendants.	)	

**NOTICE OF SUBPOENA FOR THE PRODUCTION OF  
DOCUMENTS AND THINGS TO CUSTOM SOFTWARE ENGINEERING.**

Plaintiffs Johnson Controls Technology Company and Air Distribution Technologies IP, LLC (“Plaintiffs”) hereby give notice pursuant to Fed. R. Civ. P. 45(a)(4) that it intends to serve the attached subpoena commanding the production of documents, electronically stored information, or objects upon Custom Software Engineering.

Dated: July 13, 2021

Respectfully submitted,

Of Counsel:

/s/ Jill Deutchman

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*Attorneys for Plaintiffs Johnson  
Controls Technology Company and Air  
Distribution Technologies IP, LLC*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Notice of Subpoena, and Subpoena to Produce Documents, Electronically Stored Information, or Tangible Things was served via electronic mail on July 13, 2021 upon the following counsel of record:

William F. Long  
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*Attorneys for Price Industries Inc. and  
Price Industries Limited*

# UNITED STATES DISTRICT COURT

for the

Northern District of Georgia

Johnson Controls Technology Company et al.

*Plaintiff*

v.

Price Industries Inc. and Price Industries Limited

*Defendant*

Civil Action No. 1:20-cv-03692-LMM

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Custom Software Engineering  
4336 Ballybay Lane  
Indianapolis IN 46239

*(Name of person to whom this subpoena is directed)*

**Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Arent Fox LLP  
1717 K Street NW  
Washington, DC 20006

Date and Time: 08/13/2021 10:00 am

**Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/13/2021

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

/s/ Bradford Frese  
*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff  
Johnson Controls Technology Company, who issues or requests this subpoena, are:

Bradford Frese, Arent Fox LLP, 1717 K Street NW, Washington, DC 20006;  
Bradford.Frese@arentfox.com; 202-857-6000

### Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible, because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## SCHEDULE A

### **A. Definitions**

1. The term “Accused Methods” means the methods of using the Accused Products.
2. The term “Accused Products” means the Antec Touchscreen Room Pressure Monitor (the “PMT”), the Room Pressure Monitor (the “PM”), the Fume Hood Interface (“FHI”), the Price CO<sub>2</sub> Humidity Thermostat (the “CO<sub>2</sub> Humidity Thermostat”), the Price Rooftop Controller Unit (the “PRTU”), the Price Web Server (the “Web Server”), the Fan Filter Unit (“FFU”), the BACNet Flow Controller, the Active Chilled Beam Cabinet (the “ACBC”), the Price Intelligent Controller (the “PIC”), any product accused in this action, and any product with similar functionality as the identified products.
3. The term “Air Distribution” means Plaintiff Air Distribution Technologies IP, LLC.
4. The terms “and” and “or” will be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
5. The term “communication(s)” means the transmittal of information or data in any form, including in the form of facts, ideas, inquiries, or otherwise.
6. The term “concerning” means referring to, relating to, responding to, pertaining to, mentioning, commenting on, connected with, discussing, describing,

analyzing, explaining, showing, reflecting, dealing with, comprising, consisting of, containing, constituting, resulting from, or in any way relevant to a particular subject in whole or in part and either directly or indirectly.

7. The terms “Defendant(s),” and “Price” mean Defendants Price Industries Inc. and Price Industries Limited, including affiliates, subsidiaries, and predecessors or successors thereof, and past or present directors, officers, employees, agents, representatives, or persons acting or purporting to act on behalf of the foregoing entities.

8. The term “document” is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Rule 34(a) of the Federal Rules of Civil Procedure, including electronic or computerized data compilations or information. A draft or non-identical copy is a separate document within the meaning of this term.

9. The term “including” means “including, but not limited to” or “including without limitation,” and will be construed to make these document requests inclusive rather than exclusive.

10. The term “JCTC” means Johnson Controls Technology Company.

11. The term “opinion” means evaluation, study, analysis, report, opinion, or commentary.

12. The term “Patents-in-Suit” mean U.S. Patent Nos. 6,369,716;

7,025,281; 9,625,166; 9,824.549; 10,871,304, and any patent asserted in this action.

13. The term “person” means any natural person or any legal entity, including partnerships, corporations, or other forms of business, legal, or governmental entities or associations.

14. The term “Plaintiff(s)” means JCTC and Air Distribution.

15. The terms “You,” or “Your” means Custom Software Engineering and each of its officers, directors, employees, partners, corporate parents, subsidiaries, or affiliates.

16. The term “thing” means physical specimens or tangible items other than a document, including samples, prototypes, mock-ups, test equipment, production equipment, three-dimensional illustrations of physical items, or montages of physical items.

17. The term “third party” means persons or entities other than Plaintiffs and You.

18. The term “this action” means *Johnson Controls Tech. Co. et al. v. Price Indus. Inc. et al.*, No. 1:20-cv-03692-LMM (N.D. Ga.).

## **B. Instructions**

The following instructions apply in answering these document requests:

1. All terms and definitions will be interpreted as neither broadening nor narrowing the scope of discovery permitted by the Federal Rules of Civil Procedure.

2. Responses to these Requests will include documents in Your possession, custody, or control, including documents in the possession, custody, or control of Your attorneys, as well as anyone investigating matters relating to this lawsuit on Your or Your attorneys' behalf.

3. Documents produced for inspection and copying will be organized and labeled to correspond with the request numbers below or be produced as they are kept in the ordinary course of business. Documents responsive to more than one request may be grouped with documents responsive to other requests.

4. These requests are continuing in nature and, pursuant to Rule 26 of the Federal Rules of Civil Procedure, You have a duty to supplement its document production promptly upon obtaining or learning of further responsive documents. Therefore, if documents described in these requests are not in existence or in Your control at the time of these requests, but come into existence or into Your control later, You must immediately produce such document.

5. Keep and produce a record of the source of each document or thing produced. This record will include the name and location of the file where each

document or thing was located and the name of the person, group or department having possession, custody or control of each document and thing.

6. If any document requested was formerly in Your possession, custody, or control and has been transferred, lost, altered, or destroyed, please supply the following information:

a) a description of the type of document or thing (e.g., letter or memorandum) and its contents;

b) an identification of the person(s) who prepared or authored the document, and if applicable, the person(s) to whom the document was sent or transferred;

c) the date the document or thing which the document was created and/or transmitted; and

d) the date on which the document was lost, altered, or destroyed; the conditions or reasons for such alteration or destruction; and the persons requesting and performing such destruction.

7. In the event of any alleged ambiguity in these discovery requests, Your response must identify the alleged ambiguity with particularity, the reasons why the request is considered ambiguous, and the possible meanings contemplated by You. The response must also identify which meaning was adopted by You in responding to the request.

8. If You believe that the meaning of terms in these requests is unclear, then You must assume a reasonable meaning, state what that assumed meaning is, and answer the discovery request. Alternatively, You may ask for clarification before the deadline for answering a request.

9. Plaintiffs reserve the right to clarify the meaning of requests alleged to be ambiguous or unclear, and to request and obtain information potentially within the broader meaning of requests subject to multiple interpretations.

10. If no documents or things are responsive to a particular request, You must state in writing that no responsive documents or things exist.

11. If You are withholding some or all information in response to the request, are objecting to a request, or is otherwise unable to provide a complete response to any part of a discovery request after exercising due diligence to secure the requested information, You must identify why they are withholding information, objecting to the request, or are otherwise unable to completely respond to the request, and identify persons in possession of the requested information and documents containing such information.

12. The use of a singular form of a noun will be construed to include the plural noun, and vice versa. The masculine form of a pronoun will be construed to include the feminine and neuter genders. The use of the past tense includes the present tense and vice versa.

13. Documents will be produced by You in accordance with the operative Order or stipulation governing ESI, or in the absence of such an order, as single page TIFF (Tag Image File Format) images and associated multi-page text files containing extracted text or OCR with Concordance or Opticon load files in 600x600 dpi resolution (or better) and in color (if color is useful in understanding a document). Files should be produced in native format if not easily converted to image format, such as Excel and Access files, and video or animation files.

14. Documents that include attachments should be produced in such a way that a document and attachments to that document are produced in the same production set and are identifiable as parent and child.

15. The following metadata, if available, must be included for each document production made by Defendant in accordance with the operative Order or stipulation governing ESI, or in the absence of such an order, containing: (a) Bates numbering for each production, including beginning and ending numbers for all documents and attachments; (b) custodian names in Last Name, First Name format; (c) original file name; (d) original file path; (e) document author; (f) document title; (g) creation date; (h) last modified date; (i) MD5 Hash; (j) file size; (k) file extension; (l) Control Number Begin and Control Number End; (m) Attachment Range, Attachment Begin, and Attachment End (or the equivalent thereof); and (n) for emails, metadata extracted from the subject line, To:, From:, CC:, BCC:, date sent,

time sent, date received, time received, Conversation Index fields.

16. Any redacted document should be clearly stamped with the word "REDACTED," the portions redacted should be clearly indicated, and the reason for the redaction should be indicated.

17. If You contend that documents responsive to any request are privileged or immune from discovery, in whole or in part, as a ground for their non-production and/or production in redacted form, for each allegedly privileged document provide all information required by Rule 26(b)(5) of the Federal Rules of Civil Procedure, including: (1) the factual and legal grounds for exclusion, and (2) for each document provide the: (a) author, (b) title, (c) date, (d) addressee(s), recipient(s) and/or distributee(s), (e) type of document, and (f) subject matter.

### **C. Demand for Production**

Produce documents concerning the following categories:

1. All Documents concerning contracts, agreements, licenses, assignments, purchase orders, records of payment or invoices, or instructions to manufacture, test, sell, develop, market, or advertise any Accused Product or practice any Accused Method, between Custom Software Engineering and Price or any third-party.
2. All Documents and things concerning source code and programming instructions for any Accused Product or Accused Method.
3. All Documents and things concerning instructions, product information, technical information, installations, guides, manuals, drawings, controls, and services for using the hardware, software, and services of the Accused Products and Accused Methods.
4. Documents and things concerning operation of the Accused Products and Accused Methods.
5. Documents concerning Price's adoption, incorporation, embedding, or use of any Custom Software Engineering product, service, or standard created by Custom Software Engineering.
6. Documents and communications between Custom Software Engineering and third-parties other than Price concerning the Patents-in-Suit, the Accused Products, or the Accused Methods.

7. Documents and communications concerning JCTC or Air Distribution, including documents and communications concerning products or services offered for sale or sold by JCTC or Air Distribution.

8. Documents and communications concerning Custom Software Engineering's knowledge of the Patents-in-Suit.

9. Documents and things concerning investigations, opinions, suggestions, evaluations, advice, or analysis of infringement, non-infringement, validity, enforceability, freedom to operate, right-to-use, or scope of claim coverage of the Patents-in-Suit, the Accused Products, or the Accused Methods.

10. All Documents concerning communications between Custom Software Engineering and Price.