



Principals **Ross Mottershead | Murray Godfrey | Ian Purchas | Darren Vardy | Sonia Gibson**

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*Ref: KC/1<sup>st</sup> RTC 15.04.10/Sec 20*

15 April 2010

## **FIRST REPORT TO CREDITORS**

**ATC AIR CONDITIONING AND REFRIGERATION PTY LTD**  
**A.C.N. 104 813 283**  
**(ADMINISTRATOR APPOINTED) ("THE COMPANY")**

### **TABLE OF INCLUSIONS**

1. **Notice of meeting.**
2. **Appointment of proxy form (please complete and return).**
3. **Form 535 – Formal proof of debt or claim form (please complete and return).**
4. **Administrator's report to creditors.**
  - i) **Annexure A – Declaration of Independence, Relevant Relationships and Indemnities;**
  - ii) **Annexure B – RMG Partners Business Solutions' charge rates; and**
  - iii) **Annexure C – ASIC Information Sheet "Information for Directors, Employees, Creditors and Shareholders."**

**If you require further copies of the above please contact Kevin Cotter of the Sydney office on (02) 9231 0889.**

**FORM 529A**

Paragraph 5.6.12(2)(aa)

**CORPORATIONS ACT**

**NOTICE OF FIRST MEETING OF CREDITORS OF COMPANY UNDER ADMINISTRATION**

**ATC AIR CONDITIONING AND REFRIGERATION PTY LTD**

**A.C.N. 104 813 283**

**(ADMINISTRATORS APPOINTED)**


**("THE COMPANY")**

1. On 14 April 2010 the Company, under Section 436A, appointed I J Purchas of RMG Partners Business Solutions, Level 12, 88 Pitt Street Sydney NSW 2000 as the Administrator of the Company.
2. Notice is now given that a meeting of the creditors of the Company will be held at the offices of RMG Partners Business Solutions, Level 12, 88 Pitt Street Sydney NSW 2000 on 27 April 2010 at 11.00 am.
3. The purpose of the meeting is to determine:-
  - a. Whether to appoint a Committee of Creditors; and
  - b. If so, who are to be the Committee's members
4. At the meeting, creditors may also, by resolution:-
  - a. Remove the Administrator from office, and
  - b. Appoint another person as Administrator of the Company

A Form of Proxy is attached. Proxies to be used at the meeting should be lodged with the Company, care of RMG Partners Business Solutions, by 4.00 pm on 26 April 2010 . A corporate creditor can only be represented by a duly appointed representative appointed under Section 127 and Section 250D of the Corporations Act.

Creditors wishing to vote at the meeting should establish their debt or claim by completing and lodging the attached Proof of Debt with RMG Partners Business Solutions prior to the date of the meeting.

Dated this 15th day of April 2010.

  
**I J PURCHAS**  
Administrator

APPOINTMENT OF PROXY<sup>1</sup>

ATC AIR CONDITIONING AND REFRIGERATION PTY LTD  
A.C.N. 104 813 283  
(ADMINISTRATORS APPOINTED)

I/We \_\_\_\_\_

of \_\_\_\_\_ a creditor of the

abovenamed company appoint \_\_\_\_\_ or in his/her

absence \_\_\_\_\_ as my/our general/special proxy to vote at

the meeting of creditors to be held on 27 April 2010 at 11.00 am or at any adjournment of that meeting,

and to vote:

my **general proxy** to vote on all matters arising at the meeting (including the appointment of the proxy holder as a member of any Committee of Inspection)

**OR**

my **special proxy** to vote on the following resolutions as specified below:

*PLEASE TICK ONE BOX (ONLY) FOR EACH PROPOSED RESOLUTION*

	<b>For</b>	<b>Against</b>	<b>Abstain</b>
1. Appointment of a Committee of Creditors with _____ _____ appointed as a member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. To remove the Administrator from office and appoint someone else as Administrator of the Company.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

And generally as he or she determines on my behalf.

Signed

Dated

Print Name: .....

**NOTES TO PROXY**

- (1) The person(s) appointed proxy may be the Chairperson or such other person as the creditor may approve, and the proxy form, when signed, must be lodged by the time and at the address named for that purpose in the notice convening the meeting at which it is to be used.
- (2) Note that any person signing on behalf of a company must be duly authorised by the company

WITNESS for blind creditors ONLY

I, \_\_\_\_\_  
of \_\_\_\_\_

certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

DATE .....

Signature of Witness .....

Description .....

Place of Residence .....





Principals **Ross Mottershead | Murray Godfrey | Ian Purchas | Darren Vardy | Sonia Gibson**

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15 April 2010

## **FIRST REPORT TO CREDITORS**

**ATC AIR CONDITIONING AND REFRIGERATION PTY LTD**  
**A.C.N. 104 813 283**  
**(ADMINISTRATORS APPOINTED)**  
**("THE COMPANY")**

On 14 April 2010 I was appointed Administrator of the Company by its directors, Messrs Anthony Fry and Mathew Naughton.

I have been advised that you may be a creditor of the Company.

I now submit my preliminary report in respect of the Company as follows:

- 1. VOLUNTARY ADMINISTRATION**
- 2. DISCLOSURE STATEMENT**
- 3. HISTORY**
- 4. FIRST MEETING OF CREDITORS**
- 5. EFFECT ON OWNERS OR LESSORS OF PROPERTY / EXISTING CONTRACTS / STOCK**
- 6. INVESTIGATIONS**
- 7. REMUNARATION**
- 8. GENERAL**

### **1. VOLUNTARY ADMINISTRATION**

Voluntary administration is a corporate insolvency regime designed to maximise the chances of a business, or part of a business, continuing in operation, or to result in creditors receiving a better return than would result from an immediate liquidation.

Under normal circumstances, the period of voluntary administration is approximately five weeks. During the period of voluntary administration, the administrator assumes control of the Company's assets and operations. At the conclusion of the voluntary administration period, the Company's creditors will resolve the future of the Company. The administrator is required to conduct an investigation into the Company's affairs and to report to creditors on the results of this investigation. This report will contain the administrator's opinion on each of the alternatives for the Company's future.

## 2. DISCLOSURE STATEMENT

My appointment was made pursuant to a resolution of the directors who were referred to RMG Partners Business Solutions by 180 Corporate Pty Limited. In accepting the appointment, I have considered the issue of my independence.

In accordance with statutory and professional requirements I have prepared a Declaration of Independence, Relevant Relationships and Indemnities. This Declaration is **attached** as Annexure 'A'.

In summary, I am not aware of any issues, circumstances or relationships which would preclude my appointment.

## 3. HISTORY

The Company was incorporated on 9 June 2003 and operated as a maintenance and installation business. The Company's registered office was located at Suite 412, 33 Lexington Drive Bella Vista NSW 2153.

The Company's office bearers as at the date of my appointment were as follows:

<u>Name</u>	<u>Position</u>
Anthony Fry	Director
Mathew Naughton	Director

The Company ceased trading prior to my appointment and I note winding up proceedings have been commenced. An application was made on 14 April 2010 to have the matter stood over and the matter will return to court on 5 May 2010. I will advise further accordingly.

## 4. FIRST MEETING OF CREDITORS

**Attached** is a Notice of Meeting of creditors to be held in accordance with Section 436E of the Corporations Act 2001 ("the Act"). In this regard I note the following:

### A. Purpose of Meeting

The purpose of the meeting is to determine whether to appoint a Committee of Creditors. At the meeting, creditors may also, by resolution, remove the administrator from office and appoint someone else as administrator of the Company.

### B. Committee of Creditors

Pursuant to Section 436F of the Act the functions of a Committee of Creditors are:

- i) to consult with the administrator about matters relating to the administration; and
- ii) to receive and consider reports by the administrator.

Section 436G of the Act provides that a person may only be a member of a Committee of Creditors if he / she is:

- a) a creditor of the Company; or
- b) an attorney of such a creditor because of a general power of attorney; or
- c) authorised in writing by such a creditor to be such a member.

C. Voting

The required resolutions are by a simple majority in number unless two or more creditors request a poll be taken, in which case it requires a majority in number and value. In a deadlock, the Chairman has the casting vote.

**Attached** are forms of Proof of Debt and Proxy.

The Proof of Debt must be completed in full setting out all particulars of the debt outstanding. Where the creditor is a company, the full name of the company must be shown and the form signed by an officer of the Company.

The Proxy must be completed if the creditor is a company or if an individual creditor wishes to appoint another party as his or her representative.

Please lodge these forms with this office prior to attendance at the meeting of creditors.

**5. EFFECT ON OWNERS OR LESSORS OF PROPERTY / EXISTING CONTRACTS / STOCK**

A. Owners and Lessors of Property

Please note that pursuant to Section 440C of the Act that:

“During the administration of a company, the owner or lessor of property that is used or occupied by, or is in the possession of, the Company cannot take possession of the property or otherwise recover it, except:

- i. with the administrator’s written consent; or
- ii. with the leave of the Court.”

B. Existing Contracts and Agreements

Please note that I expressly refrain from adopting any contracts or agreements of the Company in existence at the date of my appointment, unless you are formally notified to the contrary in writing. All contracts and agreements are currently the subject of review and, if appropriate, advice as to the position of same will be forthcoming in the near future. In the meantime, no implication as to the adoption of any contracts should be drawn if payments are made for any current use of goods or services.

### C. Stock

In relation to suppliers holding outstanding or unfulfilled orders or who have consignment stock with the Company or have supplied stock on the basis of retention of title, it is requested that details of same be supplied immediately. Upon ascertaining the position in relation to such, the suppliers in question will be further advised.

## 6. INVESTIGATIONS

I will be conducting my investigations into the Company's business, property, affairs and financial circumstances as required under Section 438A of the Act in order that I may form the opinion required by that section being:

- A. whether it would be in the creditors' interests for the Company to execute a deed of Company arrangement; or
- B. whether it would be in the creditors' interests for the administration to end; or
- C. whether it would be in the creditors' interests for the Company to be wound up.

The results of these investigations will be reported to creditors prior to the next meeting of creditors, details of which will accompany my report.

## 7. REMUNERATION

I will be seeking remuneration in respect of necessary work properly performed during the voluntary administration period.

There are three basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

### A. Time based - hourly rates

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

### B. Fixed Fee

The total fee charged is normally quoted at the commencement of the engagement and is the total cost for the engagement. Sometimes a practitioner will finalise an administration for a fixed fee.

### C. Commission

The total fee charged is based on a percentage scale of the gross proceeds of asset realisations.

Given the nature of this administration, I propose that my remuneration be calculated on a time basis. This is the most objective method of reflecting the work actually performed during the course of the administration.

The time will be charged in accordance with RMG Partners Business Solutions' standard hourly rates. A schedule of current rates is **attached** as **Annexure 'B'** which also provides a general guide showing the qualifications and experience of staff engaged in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage. I estimate remuneration for the period of the Administration will be in the range of \$25,000 to \$35,000 plus GST.

Creditors will be asked to approve the remuneration at the second meeting of creditors. Full details will be provided with Notice of that meeting.

## **8. GENERAL**

### **A. Further Reports**

A more comprehensive report on the Company's affairs will be forwarded to creditors with the Notice of the second meeting of creditors.

In the interim, should you have any queries please do not hesitate to contact Mr Kevin Cotter of my Sydney office.

### **B. Insolvency Information Sheets**

**Attached** as **Annexure 'C'** for your information is a copy of the insolvency information sheet entitled "Information for Directors, Employees, Creditors and Shareholders" circular published by the Australian Securities & Investments Commission.


### **C. Insolvency Information/Electronic Notification Options**

Section 600G of the Act permits electronic notification to creditors of certain notices of documents. If you would like to receive electronic notification, please complete the relevant section on the proof of debt form.

Should any creditor require assistance in completing the relevant forms or have any queries, please contact Mr Cotter.

Yours faithfully

**ATC AIR CONDITIONING AND REFRIGERATION PTY LTD**

  
**I J PURCHAS**  
Administrator

# ANNEXURE 'A'

**DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES**

**ATC AIR CONDITIONING AND REFRIGERATION PTY LTD  
A.C.N. 104 813 283  
(ADMINISTRATORS APPOINTED)**

**Independence**

I, I J Purchas, of RMG Partners Business Solutions, have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Administrator of the abovenamed Company. This assessment identified no real or potential risks to my independence. I am not aware of any reason that would prevent me from accepting this appointment.

**Relevant Relationships**

Neither I, nor the firm RMG Partners Business Solutions, have, or have had within the preceding 24 months, any relationships with the Company, an associate of the Company or a former insolvency practitioner appointed to the Company.

**Prior Engagement with the Secured Creditor**

I, or a member of my firm, have undertaken the following engagements for the Secured Creditor, 180 Capital Funding Pty Ltd and associated companies prior to the acceptance of this appointment:

<b>Name</b>	<b>Nature of relationship</b>	<b>Reasons why not an Impediment or Conflict</b>
180 Capital Funding Pty Ltd	<p>180 Capital Funding Pty Ltd has a fixed and floating charge over the Company's assets.</p> <p>RMG Partners has been instructed by 180 Corporate Pty Ltd (a related Company) on a number of occasions regarding entities unrelated to the Company.</p> <p>During the course of March 2010, Mr Ross Mottershead, a principal of RMG Partners, was instructed by 180 Corporate Pty Ltd to provide a preliminary report on the value of the Company's business and at various stages between July and December 2009, Mr Darren Vardy, a principal of RMG Partners, was requested by 180 Corporate Pty Ltd to review payment claims schedules and contracts.</p>	<p>The IPA's Code of Professional Practice notes "... that a practitioner... (may have)... an ongoing relationship with a creditor of the insolvent (which) will not in itself result in a lack of independence. However, a practitioner must always be aware of the overriding obligation to both be and be seen to be independent.</p> <p>Where a practitioner has a relationship with a person who has a charge on the whole or substantially the whole of the insolvent's property, that relationship <b>MUST</b> be disclosed in the DIRRI."</p> <p>This relationship and the work undertaken for 180 Corporate Pty Ltd will not impede my independence and will not influence or effect my ability to comply with my statutory and fiduciary duties as Administrator and/or Deed Administrator/Liquidator. The IPA's Code of Professional Practice does not consider such relationships resulting in a conflict or in any way an impediment to accepting an appointment.</p>

There are no other prior professional relationships or engagements that should be disclosed.

**Indemnities**

I have not been indemnified in relation to this administration other than any indemnities that I may be entitled to under statute.

Dated this 15th day of April 2010.



**I J PURCHAS**  
Administrator

*NOTE: If circumstances change, or new information is identified, I am required under the IPA Code of Professional Practice to update this Declaration and provide a copy to creditors with my next communication as well as table a copy of any replacement declaration at the next meeting of the Company's creditors.*

# ANNEXURE 'B'



## Hourly Insolvency Rates from 1 October 2008

	Rate \$	GST 10% \$	Total \$	
Appointee	460.00	46.00	506.00	Official Liquidator Liquidator
Partner / Associate	460.00	46.00	506.00	
Manager 1	380.00	38.00	418.00	7+ years insolv exp 3+ years as manager Qualified Accountant
Manager 2	330.00	33.00	363.00	6-7+ years insolv exp Qualified Accountant
Supervisor	250.00	25.00	275.00	4-6+ years insolv exp Qualified Accountant
Senior 1	220.00	22.00	242.00	2-4+ years insolv exp Completing CA Program
Senior 2	185.00	18.50	203.50	1-2+ years insolv exp Commencing CA Program
Intermediate 1	170.00	17.00	187.00	0-2+ years insolv exp Graduate
Intermediate 2	140.00	14.00	154.00	0-2+ years insolv exp Undergraduate
Secretary / wpo	140.00	14.00	154.00	Appropriate skills
Computer Operator	140.00	14.00	154.00	Appropriate skills
Clerk	100.00	10.00	110.00	Non Qualified Passed HSC
Typist	100.00	10.00	110.00	Appropriate skills
Junior	80.00	8.00	88.00	HSC. Starting degree/Diploma

**Notes:**

- 1) Remuneration is calculated on a time basis in accordance with the above rates.
- 2) The Firm maintains its time records in a computerised system and the information, which is entered into the computer, has its origin in diaries kept by members of the Firm.
- 3) Staff are classified in accordance with academic qualifications and insolvency experience.

# ANNEXURE 'C'



**ASIC**

Australian Securities & Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

ASIC has 11 insolvency information sheets to assist you if you're affected by a company's insolvency and have little or no knowledge of what's involved.

These plain language information sheets give directors, employees, creditors and shareholders a basic understanding of the three most common company insolvency procedures—liquidation, voluntary administration and receivership. There is an information sheet on the independence of external administrators and one that explains the process for approving the fees of external administrators. A glossary of commonly used insolvency terms is also provided.

The Insolvency Practitioners Association (IPA), the leading professional organisation in Australia for insolvency practitioners, endorses these publications and encourages its members to make their availability known to affected people.

### List of information sheets

- Insolvency: a glossary of terms
- Voluntary administration: a guide for creditors
- Voluntary administration: a guide for employees
- Liquidation: a guide for creditors
- Liquidation: a guide for employees
- Receivership: a guide for creditors
- Receivership: a guide for employees
- Insolvency: a guide for shareholders
- Insolvency: a guide for directors
- Independence of external administrators: a guide for creditors
- Approving fees: a guide for creditors

**Important note:** The information sheets contain a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. These documents may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

## **Getting copies of the information sheets**

To get copies of the information sheets, visit ASIC's website at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets). The information sheets are also available from the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au). The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.