

BEST ALTERNATIVE TO NEGOTIATED AGREEMENT (BATNA)		
<u>Mine</u>	<u>Theirs</u>	
<i>Don't Escalate Use Power to Educate</i>		
INTERESTS		
<u>Mine</u>	<u>Theirs</u>	
<i>Don't Argue Step to Their Side</i>		
COMMUNICATION/QUESTIONS		
<i>Express Appreciation, Respect Status and Autonomy. Show Affiliation. Don't React . . . Go to the Balcony</i>		
LEGITIMACY/STANDARDS		
<i>Don't Push . . . Build Them a Golden Bridge</i>		
OPTIONS		
<u>Aspire to</u>	<u>Content With</u>	<u>Live With</u>
<i>Don't Reject . . . Reframe</i>		

*Adapted from William Ury, *Getting Past No: Negotiating in Difficult Situations* (Bantam Books, 1991)

Negotiation Planning Worksheet

Interests and Issues	<p>What are the key issues? What are my interests for each? Theirs? Whose side is time on?</p> <p><i>I see your point. . . Looks like that is a big concern for you.</i></p>
Communications and Commitment	<p>Write down the questions you need to ask; plan the opening. What commitments can you make now? Contingent concessions? Concede slowly. What needs to be done to close and implement? Who controls the next implementation steps, e.g. the draft?</p> <p><i>Yes, and . . . Good point . . . Please help me understand . . .</i></p>
Legitimacy/Standards	<p>Is there a standard, like fair and reasonable pricing, or use of well accepted cost indexes, that sounds credible? Have you practiced the arguments to support your position? What will be their arguments and suggested standard? Are there external “critics” like bosses involved that need persuading?</p> <p><i>It seems fair to me because . . . What would you do if you were in my shoes?</i></p>
Options, Objectives, and Opening	<p>What do you aspire to? What will you be content with? What can you live with? Create concrete options, but stay flexible. What will be the first thing you say?</p> <p><i>Good point . . . What if? What would happen if? How could we make it better? That’s a possibility . . .</i></p>
Best Alternative to Negotiated Agreement (BATNA)	<p>What will be your best alternative or course of action if you can’t reach agreement? Can you improve your BATNA by enlisting help from others? What is their BATNA? How can your BATNA give you leverage? Can you change their perception of their BATNA?</p> <p><i>How do you see this playing out if we can’t agree?</i></p>
Relationships and Resistance Points	<p>Is there a continuing relationship concern? Does the other side have a history of using dirty tricks? On key issues, at what point do you really need to go slow, e.g. your reservation value or soft “bottom line”? Practice saying “No.” <i>I’m sorry . . . Maybe I didn’t explain myself clearly</i></p>
Documents	<p>Proposal revisions? Contract revisions? Contract amendment with settlement agreement? Memoranda of determinations, e.g. award?</p>
Emotion: Issues?	<p>Can you use appreciation, affiliation, autonomy, status? <i>This understandably is very important to you, and I see your point</i></p>
Methods: Teams and Tactics	<p>Team roles, control of the agenda/document, meeting location, having resources available, where to sit at the table, and signaling time outs. Do we want “authority” – e.g., decision makers – present?</p>

Getting Past No: Negotiating Your Way from Confrontation to Cooperation

William Ury, New York: Bantam Books, 1991

Don't React: Step to the Balcony

The first step is not to control the other person's behavior. It is to control your own. When the other person says no or launches an attack, you may be stunned into giving in or counterattacking. So suspend your reaction by naming the game. Then buy yourself time to think. Use the time to reflect about your interests and your BATNA. Throughout the negotiation, keep your eyes on the prize. Instead of getting mad or getting even, focus on getting what you want. Don't react: go to the balcony.

Don't Argue: Step to Their Side

Before you can negotiate, you need to create a favorable climate. You need to defuse the anger, fear, hostility, and suspicion on the other side. They expect you to attack or to resist. So do the opposite. Listen to them, acknowledge their points, and agree with them wherever you can. Acknowledge their authority and competence too. Don't argue: step to their side.

Don't Reject: Reframe

The next challenge is to change the game. When the other side takes a hard-line position, you may be tempted to reject it, but this usually only leads them to dig in further. Instead, direct their attention to the challenge of meeting each side's interests. Take whatever they say and reframe it as an attempt to deal with the problem. Ask problem-solving questions such as "Why is it that you want that?" or "What would you do if you were in my shoes?" or "What if we were to . . .?" Rather than trying to teach the other side yourself, let the problem be their teacher. Reframe their tactics too, by going around their stonewalls, deflecting their attacks, and exposing their tricks. Don't reject: Reframe

Don't Push: Build them a Golden Bridge

At last you're ready to negotiate. The other side, however, may stall, not yet convinced of the benefits of the agreement. You may be tempted to push and insist, but this will probably lead them to harden and resist. Instead, do the opposite—draw them in the direction you would like them to go. Think of yourself as a mediator whose job is to make it easy for them to say yes. Involve them in the process, incorporating their ideas. Try to identify and satisfy their unmet interests, particularly their basic human needs. Help them save face and make the outcome appear as a victory for them. Go slow to go fast. Don't push: Build them a golden bridge.

Don't Escalate: Use Power to Educate

If the other side still resists and thinks they can win without negotiating, you need to educate them to the contrary. You need to make it hard for them to say no. You could use threats and force, but these often backfire; if you push them into a corner, they will likely lash out, throwing even more resources into the fight against you. Instead, educate them about the costs of not agreeing. Ask reality-testing questions, warn rather than threaten, and demonstrate your BATNA. Use it only if necessary, and minimize their resistance by exercising restraint and reassuring them that your goal is mutual satisfaction, not victory. Make sure they know the golden bridge is always open. Don't escalate: use power to educate.

Sample Buyer Negotiation Plan: Indemnification and Limitation of Liability

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<p style="text-align: center;"><u>Mine</u></p> <p>Get another seller, but be prepared for schedule delay and possible increased pricing. Be aware that the relationship might be compromised.</p> <p style="text-align: right;"><i>Don't Escalate . . .</i></p>	<p style="text-align: center;"><u>Theirs</u></p> <p>Assuming there is an opportunity, find another buyer. Be aware that the relationship may be compromised.</p> <p style="text-align: left;"><i>. . . Use Power to Educate</i></p>	
INTERESTS		
<p style="text-align: center;"><u>Buyer</u></p> <ul style="list-style-type: none"> – Protect against claims where there may be no governmental immunity, e.g. constitutional torts such as hostile work environment – Shift risk to seller for risks better managed by seller – Have seller assume responsibility for liability and litigation costs arising out of seller acts – Keep liability risk aligned reasonably with insurance coverage – Even if immunity, shift litigation costs <p style="text-align: right;"><i>Don't Argue . . .</i></p>	<p style="text-align: center;"><u>Seller</u></p> <ul style="list-style-type: none"> – Avoid tenuous damages claims based on indirect impact from breach of contract claims, e.g. loss of productivity and other indirect costs – Avoid additional liability, and keep risk aligned with product/service prices – Satisfy company policies regarding Sarbanes Oxley – Keep liability risk aligned reasonably with insurance coverage <p style="text-align: left;"><i>. . . Step to Their Side</i></p>	
COMMUNICATION/QUESTIONS		
<p>Why are the normal liability rules not acceptable? What unusual risks are you concerned about limiting? What happens if we don't address a liability cap? Our indemnification is intended to cover situations where we would be held vicariously liable for your acts or the acts of your subcontractors. How is that not fair? What flexibility do you have on limitation of liability? Who makes the decision? Do you see tradeoffs between indemnification, limitation of liability, and insurance requirements?</p> <p style="text-align: center;"><i>Express Appreciation, Respect Status and Autonomy. Show Affiliation. Don't React . . . Go to the Balcony</i></p>		
LEGITIMACY/STANDARDS		
<p>The party best able to manage the risk should be responsible for assuming liability. Because potential litigation costs can be sizeable, there should be fair allocation of responsibility for defense of claims.</p> <p style="text-align: center;"><i>Don't Push . . . Build Them a Golden Bridge</i></p>		
OPTIONS		
<p style="text-align: center;"><u>Aspire to</u></p> <p>Broad indemnification by seller who pays ultimate liability and litigation costs arising out of any acts by seller, its employees, agents, and subcontractors, with no limitation of liability and no language that conditions liability with language like “negligent” or “fault.”</p>	<p style="text-align: center;"><u>Content With</u></p> <p>Indemnification limited to proportional fault, with seller able to control litigation. Liability cap limited to twice contract value. Reciprocal damages exclusion for indirect and consequential damages. IP infringement, bodily injury and tangible property damage excluded from operation of limitation of liability clause/damage exclusion.</p> <p style="text-align: center;"><i>Don't Reject . . . Reframe</i></p>	<p style="text-align: center;"><u>Live With</u></p> <p>Liability capped at contract value (not payment made), but retain recoupment right for progress payments not earned by contractor. Reciprocal exclusion of indirect and consequential damages. Bodily injury and tangible property damage excluded from operation of limitation of liability clause.</p>