

## 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>

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

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

## Sample Buyer Negotiation Plan: Indemnification and Limitation of Liability

<b>BEST ALTERNATIVE TO NEGOTIATED AGREEMENT (BATNA)</b>		
<p style="text-align: center;"><b><u>Mine</u></b></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;"><b><u>Theirs</u></b></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>	
<b>INTERESTS</b>		
<p style="text-align: center;"><b><u>Buyer</u></b></p> <ul style="list-style-type: none"> <li>- Protect against claims where there may be no governmental immunity, e.g. constitutional torts such as hostile work environment</li> <li>- Shift risk to seller for risks better managed by seller</li> <li>- Have seller assume responsibility for liability and litigation costs arising out of seller acts</li> <li>- Keep liability risk aligned reasonably with insurance coverage</li> <li>- Even if immunity, shift litigation costs</li> </ul> <p style="text-align: right;"><i>Don't Argue . . .</i></p>	<p style="text-align: center;"><b><u>Seller</u></b></p> <ul style="list-style-type: none"> <li>- Avoid tenuous damages claims based on indirect impact from breach of contract claims, e.g. loss of productivity and other indirect costs</li> <li>- Avoid additional liability, and keep risk aligned with product/service prices</li> <li>- Satisfy company policies regarding Sarbanes Oxley</li> <li>- Keep liability risk aligned reasonably with insurance coverage</li> </ul> <p style="text-align: left;"><i>. . . Step to Their Side</i></p>	
<b>COMMUNICATION/QUESTIONS</b>		
<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?</p> <p>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?</p> <p>What flexibility do you have on limitation of liability? Who makes the decision?</p> <p>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>		
<b>LEGITIMACY/STANDARDS</b>		
<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>		
<b>OPTIONS</b>		
<p style="text-align: center;"><b><u>Aspire to</u></b></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;"><b><u>Content With</u></b></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;"><b><u>Live With</u></b></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>