

Mastering the Negotiation Process

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Mastering the Negotiation Process

- Negotiation Is A Process And Not An Event
- The Negotiation Process Starts Long Before Legal Becomes Involved
 - The earlier that legal becomes involved the better
 - In-house versus outside counsel
 - Help structure the deal from the beginning
 - Ask questions and list issues that business people may not think to ask
 - Start to build a team relationship; Internal negotiations
 - Start to develop a pre-negotiation plan

Identify Negotiation Team Members and Roles

- Typical Team Members – Sales, Procurement, IT, Stakeholders, Business Development, Maintenance and Support, Customer Service, Marketing, Finance, Legal, Executive Management
- The Core Team
- Not All Team Members Will Be Involved At The Same Time And In The Same Way
 - Changing roles and strategies

Identify Negotiation Team Members and Roles

- Include Key Negotiators With The Proper Expertise And Decision-Making Authority
 - Caveat: Don't include your final decision makers
- Keep Loose Cannons, Desperation Demons And Ill-Prepared Team Members From Face-To-Face Negotiations
 - They keep you from using effective negotiation strategies
 - They have an adverse impact on leverage
 - The importance of leaving egos at the door

Identify Negotiation Team Members and Roles

- Change The Dynamics
 - If it doesn't work, change it!
 - Issues, people and strategies
- Form A United Front
 - The negotiation is never ever personal and always about business no matter what
 - Discuss all issues, strategies and roles with team members and make them part of your pre-negotiation plan
 - Build your internal team relationships
 - Keeps you and your team members from falling victim to divide and conquer and other strategies
 - Keeps team members focused on the issues and on the same page
 - Enhances confidence and leverage

Identifying Negotiation Team Members and Roles

- Multiple Team Members
 - Support
 - Intimidation
 - You need more than one person to observe body language and listen to all that is being said
 - You can't keep track of everything going on in the room or all of what is being said by various parties while you are in the heat of negotiations and trying to decide what to say next

Identify Negotiation Team Members and Roles

- Key Roles
 - Choose Core Team Members Who Can Stay Cool, Calm And Focused
 - Roles Based Upon Expertise
 - Behind the Scenes Roles
 - Assigned Roles (Good Guy/Bad Guy, Higher Authority etc.)
 - Roles to Keep the Momentum Going
 - Negotiation Style (The Voice of Reason Versus Going for the Jugular Over Every Issue)

Identify Negotiation Team Members and Roles

- Vendor Negotiations
 - OAG Point Person
 - Tolerant of other people's viewpoints
 - Able to plan and thinks clearly under pressure
 - Acts indecisive; Always assessing options
 - Never volunteers information
 - Asks same questions across the organization
 - Experienced in technical area involved

Identify Negotiation Team Members And Roles

- Vendor Negotiations
 - OAG Team Makeup
 - Credibility of the Team
 - Expert Power
 - Independent Devil's Advocate
 - Unrelated to the users/stakeholders
 - “What if we went with a different vendor?”

The Pre-Negotiation Plan

- The Most Important Part Of Your Negotiation
 - If you don't know what you want the terms of your deal to be, you'll end up with some other deal
- Own The Negotiation
- Successes Can Be Measured
- You Can Stay Focused On What The Terms Of Your Deal Should Be As The Deal Evolves And Keep From Making Rash Decisions
- You'll Know What Strategies You'll Need To Employ To Achieve Your Objectives As Well As The Objectives Of Negotiators On The Other Side
- Evolution Of The Deal Can Be Tracked
- You Will Be Able to Identify What You Might Be Leaving on the Table
- You'll Know Your Walk-Away Points
- A Flexible And Fluid Tool

The Pre-Negotiation Plan

- The Risks Of Being Without A Plan
 - Reaction instead of planning
 - Lack of focus on key objectives and strategies if they're not properly identified and followed by all members of the negotiation team
 - More inclined to make rash judgments
 - More confusion as negotiations evolve
 - Desperation demon rears its ugly head
 - Emotions take over
 - Hard Or Impossible To Identify What's Been Left On The Table
 - Loss of Control Of The Negotiations
 - Savvy negotiators on the other side will gladly take control of your deal
 - The Focus May Ultimately Shift To Closing The Deal Out of Fear and Frustration Rather Than Closing A Good Deal

The Pre-Negotiation Plan

- Define And List Your Objectives
 - Products, services, development, maintenance and support, training, service levels, term, pricing, licenses, ownership of intellectual property, benchmarks, acceptance criteria, warranties, limitation of liability, confidentiality, indemnification, competitive advantage, brand recognition, partnerships, adding to a suite of products, getting your foot in the door, testimonials, referrals etc.
 - Your objectives should also include what you understand the reasonable needs and objectives of the other side to be
 - Have alternatives ready
- Define And List Your Strategies
 - Will change as the negotiations proceed
 - Each deal will be different and evolve as the negotiations progress
 - Your strategies will change in response to tactics used by negotiators on the other side
 - Anticipate and be ready to handle what may become issues based upon precedents, the industry, the competition, your knowledge of the party on the other side and your teams' and colleagues' experiences
 - Work toward engaging negotiators on the other side in a dialogue and making them part of a mutual solution

The Pre-Negotiation Plan

- Anticipate Negotiations Strategies That May Be Used By Negotiators On The Other Side
- Always Know Your Alternatives And Walk-Away Points
- List Strengths and Weaknesses
- Walk-Away Points
 - “When You Have No More Alternatives, Suddenly The Solution Is Crystal Clear” (Winston Churchill)
 - If it’s a bad deal, walk away from it
 - Define your walk-away points and live by them

Assessing and Enhancing Leverage

- Negotiators Commonly Believe That Negotiators On The Other Side Always Know More Than They Do
- Knowledge Enhances Your Leverage; He (Or She) Who Thinks That He (Or She) Has More To Lose Has Less Leverage
 - Probe, probe, probe
 - Know the reputation, objectives and needs of the party on the other side
 - It's not always about price
 - What if they're bigger than you are?
 - Are they the only game in town?
 - Know the industry, competition, products, services etc.
 - Precedents
 - Strengths and weaknesses
 - Know your alternatives
 - Know your walk-away points
- How Confidence Enhances Your Leverage
- How Their Reasons For Wanting to Enter Into The Deal Become Your Leverage

Maintaining Effective Relationships Between Business and Legal Teams

- Inherent Disconnect Between The Roles Of Business And Legal Teams
 - Communicate the great value that legal can bring early in the process
 - In-house versus outside counsel
 - Develop a reputation for assisting the business people in successfully structuring their deals and helping them to anticipate the issues and alternatives
 - Become a mentor and they'll come to you
 - Help the business team with its pre-negotiation plan and establish roles
 - Handling the tough and more adversarial issues
 - A Common Mistake: Be careful about going for the jugular to get the best deal as this can damage or ruin a business relationship