



Contract Negotiation

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Negotiating contracts can be stressful, even for the most seasoned negotiator. For those new to the process it can be daunting. Ideally both parties are equally invested in the deal going through. But in most cases, one party has a greater need or desire, and there is an imbalance of power. This sets up a dynamic that may lead to a less than satisfying contract, or the demise of the deal altogether. To prevent that, there are certain tips to remember and tools to use.

Aim for a win-win result

The phrase “win-win” may be a bit overused, but the point is simple: set up a scenario where both parties get a result they can live with. It doesn’t mean everyone gets everything they want. That’s nearly impossible, but it is possible for everyone to be satisfied. Going into negotiations people take different stances. Some posture an all-or-nothing position. That is effective only if walking away is an acceptable option. If an agreement is truly desired, a negotiation will be a give and take. It is perfectly reasonable to bring up this point if one party is acting in a very assertive manner that interferes with a mutually good result.

Recognize the difference between what you need and what you want

A contract is simply the articulation of a relationship. In any relationship there are certain things you need for that relationship to be worth your while, and there are some things you want but can live without. Though you don’t put it on the table right away, you should be clearly aware of those elements. If you don’t get what you need, it is likely a deal breaker. On the other hand, what you want is negotiable, for you and the other party. These are at the heart of the give and take.

Make sure what you need is clear and don’t be afraid to ask for what you want

Particularly if the other party is aggressive, it is tempting to forgo asking for what you want, especially if you already have gotten what you need. Also asking for what you want may at times feel risky, like it is asking too much and may hinder the deal. Of course assess the dynamics, but lean toward asking for what you want. This is a negotiation, and it is expected that sometimes the answer will be “no.” Oftentimes though, what you want (as opposed to need) is particular to you, and the other party will gladly throw it in, building good faith and setting the stage for their own wants to be met.

Don’t negotiate against yourself

This is a commonly used phrase. It is said often because it is so tempting, when anxious about a deal, to make the first move and get things rolling. Also tempting is to bid again before there is a counter offer. In fact the other party may be stalling hoping this will happen. Once you have sold yourself short, there is no going back. If there is one hard and fast rule for good negotiating, it is be patient and wait your turn. If the other party shows a lack of interest or is in a stalemate because they truly aren’t interested, there is not much you can do. But if they are still honestly negotiating, they expect you to wait for their counter offer, even if they used a tactic to make you feel otherwise.

Business is business—but the people who work in business are people

That means that no matter how many times we hear the phrase “it’s just business,” the reality is people running businesses are people, and therefore complex. People have a host of motivations. Money is certainly one of them. But success, power, personal situations, and an infinite number of possible things you don’t know about, are part of what makes up a negotiation process. Notice who you are dealing with, what they respond to well and what makes them wary. Don’t manipulate, people see through that. Do honestly respond positively to what works and refrain from employing what doesn’t. This will be different with every person and every negotiation.

Use the negotiation to build a relationship

Lawyers or outside negotiators are sometimes used for various reasons, often good reasons. However, what a lawyer or outside negotiator cannot do is build a relationship between you and the other party. Whether the deal is short or ongoing, you want the deal to go smoothly. And even if it is not anticipated that there will be an ongoing relationship, or subsequent deals, there may be. You never know for sure. Assume there will be. Use the negotiation process to build a rapport and the beginning of trust. In business, just as in personal relationships, the dynamics of the relationship change everything. Set the stage for the future.

Using a third party negotiator is sometimes wise

Although many relationships benefit from the trust building of the negotiation process, there are times when an aggressive or challenging stance is necessary for the best outcome. Here, an attorney or other third party negotiator can step in to take a stronger position, playing a “bad cop,” or the role of “the beard.” This may protect what is otherwise an amicable dynamic and/or allow you to build a more positive dynamic later. It is not unexpected that an attorney will play hardball. Use that to your benefit if you think you may need deniability. This is a perfectly reasonable strategy. Different people have different roles.

Don’t forget the details—you may need them

It is essential that all the details are put into a contract, thus negotiated. The contract really serves two main purposes. First, it is a reference document for when there is confusion or memories need to be refreshed. And second, it articulates the rules when there is conflict. After the contract is negotiated and written, you may never look at it again. In fact that is most often the case—unless there is a dispute. Then every word that is, and is not, in the contract is essential. That can’t be emphasized enough. Contracts are largely in place to settle disputes. In the case of a dispute you want every aspect of the relationship to be mapped out. This helps to prevent escalation and litigation, and if there is litigation, helps to prevent unexpected and unwanted surprises.

Some firms may find that they do not have the expertise or capacity to engage in important contract negotiations, especially pertaining to financial elements that can impact many other areas like covenants, taxes and regulatory compliance. In situations like these, they should consider contracting with an outside resource experienced in negotiating contracts that are firm, fair and flexible in the appropriate areas.

About CFO Edge

CFO Edge is a leading Southern California provider of outsourced CFO services. Based in Los Angeles, we are a group of experienced chief financial officers who engage with CEOs and CFOs on demand to address strategic planning, business management, and day-to-day financial operations challenges. Our seasoned professionals deliver services as interim CFOs, part-time CFOs, project-based CFOs, recruitment-to-permanent CFOs and interim-to-permanent CFOs. At CFO Edge, we’re passionate about helping our clients create, grow and sustain value. For more information, visit www.cfoedge.com or call 626.683.8840.