

# Negotiating Long Term Agreements

ML Taylor, C.P.M.

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## Before we start ...

SAFETY AS A PRINCIPLE	LANGUAGE
Personal responsibility ...	Buyer =
Our visitors &	Contract Administrator =
Our family &	Contracting Officer =
Our friends &	Supply Chain Manager
Ourselves	Contract =
	Purchase Order =
	Agreement

*Taylor's background and perspective*

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## What do we want to accomplish today?

- Item 1 A Different Perspective Strategy
- Item 2 Opportunities Discussion
- Item 3 Tools and Tips & Tactics

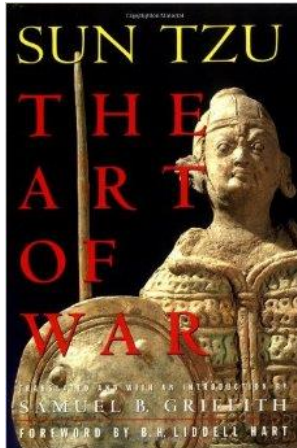
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## Discussion: Value of a Long-Term Relationship

Buyer	Seller
<ul style="list-style-type: none"> <li>• Reduced acquisition costs</li> <li>• Shorter acquisition cycle</li> <li>• Predictable costs</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced selling cost</li> <li>• Predictable demand</li> <li>•</li> <li>•</li> <li>•</li> </ul>

*Reality: We negotiate long term relationships in our personal lives - often*

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## The Art of War

**Win Without Fighting!**

*Prepare for war but do everything you can to win before it starts*

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- Too expensive
- Too much work
- Too much time
- Too many people involved
- Lack of management support
- Lack of inspiration
- Lack of energy
- Diminishing returns
- Inexperience
- Public bidding process
- Narrow definition

**Problem:**  
*"Negotiations were not conducted because"*

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- We know how to negotiate
- Normal part of the job
- Seek incremental benefits
- Long term success is a shared responsibility among all departments
- Based on company & organization goals
- We know how to find responsible sellers

**Solution:**  
*Change the way we think about negotiations*

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- Incomplete contract
- Changes & claims
- Malicious compliance
- Seller loses money
- Buyer pays too much
- Contractor fails
- Legal costs
- Starting over

**Poor Negotiation**  
=  
*Unbalanced agreement*



*Buyer & Seller can both lose contract negotiation*

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- Not a heated wrangling between teams of lawyers and accountants
- A set of tools and work processes to
  - meet our needs and
  - attain our goals incrementally
- A communication process used to
  - reach a common understanding
- Each detail resolved
  - is a successful negotiation
- A team can outperform an individual

**Sell  
Your  
Team:  
A  
new  
way to  
negotiate**

*Even the most complex contracts consist of many finite elements*

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- Strategy has been approved internally
- Organization is aligned
- Targets are established
- Tactics part of day-to-day process
- All communications reinforce our intent
- I will manage the process

**Strategy:  
We are  
always  
negotiating**

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**How Do  
we Start?**

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- Most negotiations are over before they start
- What will each gain in agreement?
- Pick the person, place and time
- Who will decide & how?
- Include powerful friends only if you can control them
- Intangible allies: precedent, policy, president

## It's Never Too Soon To Plan....

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- The problem with conflict of interest; it is not obvious to everyone
- Your leadership test & responsibility
- Colleagues, management and staff
- We all want to support our company
- Explain common mistakes:
  - you're the sole source...
  - competitor can't...
  - we have a deadline...
- Give people credit and recognition  
*They won't feel like they have to grandstand*

## Train Your Team

*Explain the expected benefits as well as legal constraints*

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- We can add value by...
- Extra costs include...
- Is this an illegal action?
- We would have also included...
- Have we considered these risks?
- Does this violate company policy?
- Have we provided for follow-on requirements, warranty, service, etc.?
- Since we are both trying to make the best decision for our company, we should consider alternatives....

## Negotiating With The Boss

*Help manager make informed decisions*

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- Listen & Read
- Ask questions
- Propose accurately
- Accountable
- Earn their fee
- Support policy
- Be honest

## I Expect Responsible Sellers Who...

*What do sellers expect from us?*

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- Complete contract goal
- Smooth working relationship
- No surprises!
- Successful performance
- Satisfied organization
- Option and interest by both for a continued relationship

**Sellers:**  
*We have common objectives*

*We can both win a contract negotiation*

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**The common enemy =**



**A malformed contract**

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- Establish expectation and be consistent
- Bring information
- Bring suggestions
- Solve problems
- Earn the business

**Strategy:**  
*No wasted sales calls*



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**Are we Negotiating?**

**SOLICITATION**

1 ea.,  
70K A/C unit, complete

**PROPOSAL**



*Who is doing a better job of negotiating?  
Buyer/Seller*

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- Give the seller a chance to sell
- Demonstrate responsiveness
- Demonstrate responsibility
- Explain about prices and costs
- Data to prepare for changes
- Contingency information

e.g. Spare parts lists, warranty, service, operating manuals

- Supplier's price strategy

e.g. price discounts, learning curve, delivery, production, raw materials, sourcing, inventory

## Solicitation; A buyer's sharpest tool

*What value can procurement add to a solicitation?*

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**Do I have to buy from this supplier?  
What am I doing to prevent it?**

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- Personnel issues
- Past performance issues
- Delivery problems
- Product defects
- Delays
- Lack of proposal detail
- Status & progress reports

## RFP Targets Weakness

*How can we proactively solve this issue in the solicitation?*

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- Negotiate before bidding starts
- Information is power
- Buyer Advantages
  - Process and schedule control
  - \$\$\$\$\$
- Weakness can be mitigated  
*Preplanning, fact finding, better solicitation, trained seller, internal support*

## Formal Bid Challenge?

*Even in a formal bid process, we have leverage*

**Technical folks might prefer a do-over rather than the alternative**

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- Demonstrate understanding
- Resolve minor irregularities  
e.g. page numbering is wrong
- If we need the info. to make a selection decision = BAFO
- Improve value added = BAFO
- Material change = BAFO
- GAO case references

## Clarification vs. Discussion

*How can we avoid this situation next time?*

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- Gather information  
*From your team as well as the seller*
- Tour, travel and read
- Hard questions are easier when not negotiating
- Listen more than you talk
- Confirm all assumptions
- Other customers
- Competition
- Record, save & share

## Fact Finding

*THE most important lesson I've learned in govt. contracting!*

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## Ask Questions

- Don't assume anything. Verify everything.
- Do I have to buy materials in standard quantities?
  - I end up with more material than I need to make the current order.
  - Scrap value. Does the left-over or waste material have a residual value?
- What is the optimum labor mix?
  - Is it more cost effective to have more skilled labor at a higher price?
- What are the critical-path cost elements?
  - Make or buy options?
  - Commodity pricing and hedging
  - Subcontracting risks
  - Strategic Materials, labor agreements,
  - Price volatility
- What are the recurring vs. one-time costs?
  - Special tooling vs. near and long term savings
- Why is the price set at this level?

*What we don't know will hurt...  
What we assume will hurt more!*

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- Sole Source
- Preferred Source
- Long Term agreement
- International & offshoring
- Urgent need
- Warranty & repairs
- Regulations

**Strategy:**  
*Prepare for the tough challenges*

*What can we do today to mitigate tomorrow's problems?*

*If it was easy; engineering could do without us*

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- Establish effective communications
- Gain understanding
- Build trust and honesty
- Find common elements
- Each agreed detail is one step closer to a deal
- Record , repeat & reinforce

## Build Consensus

*After a lot of little agreements – it's a long way back - no one wants to start over*

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- Model: A middle-east truce
  - Establish trust, seek common goals and share in the efforts to attain peace

## Seek Common Objectives

Examples:

- A sole-source product
- An emergency service call
- A fire system pump...
  - Both parties want a successful transaction – that's a start

*What else do we both want?*

*If the seller doesn't want our money, what does he want?*

*What might the seller like to have that I can offer?*

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- Trust & respect
- Collaborative attitude
- Open & honest communication
- Understand the needs and goals of each participant
- Work together to mitigate risks
- Seek an agreement that encourages successful performance

## Success Depends On People

*People and their personalities are an important component of every attempt to reach an agreement?*

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vs.



## Warning

- Relationships are important – but ultimate test will be in the written agreement
- People will change
- Opinions will change
- Circumstances will change –
- **Writing must survive reorganization**

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## ➤ Add Value by Negotiating Missing Details



- Reduce cost and administration
- Enhance the ROI
- Reduce performance risks
- Mitigate future problems
- Change the nature of the transaction to strategic
- Contract element checklist

**+ Contingency**  
**+ Conditional**  
**+ Essential**  
**+ Optional**

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- Can we use negotiation tactics and strategies and maintain a good working relationship?
- Can we use these “tactics” without being mean or cruel?
- Can we use these “tactics” on a friend?
- Example: T-day, it can be done and you get better at resolving the incongruity with practice
- Bottom Line: We **practice** win-win negotiating all the time

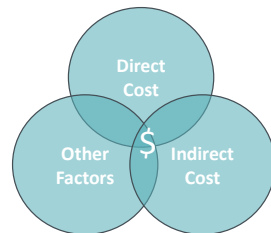
**Reality Check**

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- Protect against competition
  - What the market will pay
  - Cover Costs
  - Desired Profit
- vs.
- Customer loyalty
  - Perishability
  - Quantity & trade discounts
  - Distributor discounts

## Selling Price Strategy



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- Special deals
- Closeout Sale
- Loss leaders
- Parametric pricing
- Bulk pricing
- Buy 2 get 3
- Baker's dozen donuts
- General Mills & Costco team up to sell a 4lb box of Cheerios
- Free Shipping!

**Sellers Manipulate Prices...**

*What can we learn from these seller tactics?*

Are we negotiating?

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- What does the price include?

*Supplies (how much)*

- What does the price exclude?

*Extra cost items?*

- Primary price drivers?

*Mobilization, delivery, labor*

- What are we missing?

### Strategy: Get a Price Breakdown

*What we know (or not) about pricing will help later*

**2 X the work ≠ 2X the price**

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- What can be changed?  
*to improve the overall value*
- Can we reduce seller's cost?  
*and our price*
- What else can the seller do?  
*at no extra cost or less than mine*
- Can we remove complexity?  
*and reduce risks*
- What are we assuming?  
*that should be verified*
- What is the contract missing?  
*That should be added*
- What might change in performance?

### Take Time To Consider

*What did we leave on the table?*

**Concessions are not always price**

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- Unbalanced value

*- elements of the contract are often worth more to one party than the other*

- Separate cost elements – look at the details

### Cost Targets

- Unrelated cost drivers

- Collaborate on cutting costs

- Cost savings that can be shared

*Focus on what & why*

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- Identify indirect cost elements
- Eliminate if possible
- Add to contract

### Indirect Strategy

*Increase the value of the contract by including all of the indirect benefits which are available. Even if we can't negotiate a lower price, we can get more value and a better contract.*

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## Costs = Long-Term Negotiation Opportunities

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## Price vs Cost

- Pricing serves many purposes
  - New customers, move inventory, Market-based, competition, loss-leader
  - .....and sometimes make a profit
- Price is arbitrary
  - Prices can be negotiated
- Costs are business expenses
  - Costs must be mitigated or avoided

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## Consider TCA

- Evaluate the total transaction costs (for both buyer and seller)
- Price + TCA + TCO + COS, etc. etc.
- A valuable concession is not always price
- Transfer costs to the party best able to manage the cost
  - Costco example



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## Negotiation \$ Targets



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## Costs:

### Direct

material  
labor

### Indirect

Transportation  
Storage

### G&A

Training

### Profit

## Opportunities

- Material substitution
- Buyer supplied material
- Scheduled production
- Delivery options
- JIT

## Opportunities -soft

- Training
- Spares catalog
- Publicity
- Upgrades

## More Cost Opportunities

- Extra Castings
- Drops & excess
- Shop failure rate is really 8%?
- Inventory shrinkage
- Schedule flexibility
- Delivery flexibility
- Tooling, templates, molds

## Even More Cost Opportunities

- Labor to fabricate and service
- Labor category changes
- Learning Curve, setup time
- Raw material specification
- Material substitution, subcontracting, strategic materials, inventory value, acquisition assistance
- Training & downstream support
- Spare parts lists & inventory
- Marketing and advertising
- Audit and regulation support [e.g. sustainability, human rights]



### ISSUES TO CONSIDER NEGOTIATING

Excerpts from the seminar: [PLANNING BETTER NEGOTIATIONS](#)  
MICHAEL L TAYLOR, C.P.M.

*Review this list before you negotiate any contract. Take advantage of all the opportunities and cover all the important issues.*

<ul style="list-style-type: none"> <li>• Availability</li> <li>• Administrative charges</li> <li>• Alternate Dispute Resolution</li> <li>• Authorization schedule</li> <li>• Audit rights</li> <li>• Bank &amp; Finance Institution</li> <li>• Barter arrangements</li> <li>• Cancellation charges</li> <li>• Confidential information</li> <li>• Contingencies</li> <li>• Copyright</li> <li>• Changes</li> <li>• Consignment inventory</li> <li>• Cost Breakdown</li> <li>• Customer trade</li> <li>• Currency</li> <li>• Customer visits</li> <li>• Damages</li> <li>• Delivery</li> <li>• De-substitution costs</li> <li>• Discount</li> <li>• Electronic funds transfer</li> <li>• Excess capacity</li> <li>• Exchange rates</li> <li>• Exchange</li> <li>• Extended warranty</li> <li>• F.O.B. point</li> <li>• Fee</li> <li>• Freight method, costs and charges</li> </ul>	<ul style="list-style-type: none"> <li>• Installation</li> <li>• Insurance</li> <li>• Intellectual property rights</li> <li>• Inventory Costs</li> <li>• Invoice method</li> <li>• Invoice terms</li> <li>• Labor rates</li> <li>• Lead time</li> <li>• Legal issues</li> <li>• License agreements</li> <li>• License fees</li> <li>• Maintenance</li> <li>• Marketing support</li> <li>• Manufacturer's allotment</li> <li>• Modifiers</li> <li>• Meeting locations &amp; schedule</li> <li>• Modification costs</li> <li>• Multiple deliveries</li> <li>• Obsolete Inventory Responsibility</li> <li>• Overage</li> <li>• Packaging</li> <li>• Payment terms</li> <li>• Payment method</li> <li>• Performance specifications</li> <li>• Price</li> <li>• Price escalation</li> <li>• Problem escalation path</li> <li>• Profit</li> </ul>	<ul style="list-style-type: none"> <li>• Progress payments</li> <li>• Quality rate</li> <li>• Raw materials</li> <li>• Recycled content</li> <li>• Residual value</li> <li>• Restocking charges</li> <li>• Returns</li> <li>• Risk-of-loss</li> <li>• Safety Stock</li> <li>• Scrap recycling</li> <li>• Spare parts pricing/availability</li> <li>• Special marking</li> <li>• Specifications</li> <li>• Stand-by rates</li> <li>• Start-up assistance</li> <li>• Storage of unused materials</li> <li>• Subcontracting</li> <li>• Termination Provisions</li> <li>• Terms and conditions</li> <li>• Testing</li> <li>• Tooling</li> <li>• Training</li> <li>• Travel expenses</li> <li>• Upgrades</li> <li>• Wage Adjustments</li> <li>• Warranty</li> <li>• Vacation / Shutdown</li> <li>• Work schedules</li> </ul>
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**Add these to the list when Negotiating Long Term Relationships**

<ul style="list-style-type: none"> <li>• Access to Computerized Inventories</li> <li>• Access to Computer Systems</li> <li>• Authorities and Limitations</li> <li>• Computer Security Program</li> <li>• Cost-billing problem people</li> <li>• Cost cutting procedures</li> <li>• Disposition of user data</li> <li>• Efficiency improvements</li> </ul>	<ul style="list-style-type: none"> <li>• Ending the contract relationship</li> <li>• EX/FA/NET ordering relationship</li> <li>• Fair profit vs fair value</li> <li>• Goal of the relationship</li> <li>• In-Plant support, inventory</li> <li>• Internet Web Page Sharing</li> <li>• Key players</li> <li>• Legal references</li> <li>• Operating procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Power balancing</li> <li>• Problem resolution process</li> <li>• Product improvements</li> <li>• Reporting</li> <li>• Removal of packaging materials</li> <li>• Sharing of cost savings</li> <li>• Structure of the agreement</li> <li>• Terms</li> <li>• Training programs</li> <li>• User Costing/Maintenance</li> </ul>
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### Handout

*Review this list for each action*

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## When the Talking Starts

*Don't forget to listen  
Don't forget to stop talking*

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- What do we think we know?
- What don't we know?
- What the seller need/want?
- What is motivating the seller?
- Who will decide?
- Why/when would they walk?
- Is failure an option?

**Verify  
Facts &  
Assumptions**

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- Your price is preposterous
- You're trying to cheat me
- You're not the low bidder
- You can't be serious
- I want to buy
- I need
- I can't accept
- You are the worst salesman...

**Language  
Language  
Language**

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This is a disaster – we're all gonna die..... or

"This justification would be better if we..."

"I think we have reached a positive outcome given the circumstances"

"It looks like we have some opportunities for long term improvement"

**Practice  
Positive Speak**

***Say it  
how you want  
others to feel it***

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- Don't trust anyone else to write it. The written agreement must be exactly what you want it to say
- Plain language, bullets not prose, clear intent and meaning
- Daily summary, action items, points of agreement and contention
- Include performance requirements and important contract elements
- Timely distribution - everyone has a fair chance to confirm or disagree
- Better to find out about a misunderstanding before the contract is issued.
- **Anything you don't say – won't happen**
- Teamwork to make sure it's complete

## A Few Words About "The Record"



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*Unfortunately, not all contractors want to collaborate and sometimes we need to help them understand that working together is better than working alone.*

## Reality

*If we can't trust the contractor to sell it at a fair price, or perform as promised, then it's time to employ a few more direct tactics.*

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## Strategies and Tactics –

*Sometimes we have to push...*

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- Make sure you get an answer
- Keep asking
- Focus on the issue not people
- Is there a competitive product?
- What makes yours better?
- Why can't you.....?
- How many have you had to fix?
- What is the turn time for fixes?
- How can we make this happen?

## Ask Leading Questions

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- Do I get a price break?  
How much is our price break?
- Do we get maintenance service?  
How long is the maintenance coverage?
- Do I get a warranty?  
Please explain the warranty

## Ask Better Questions

*Shape the answer you want with the question you ask*

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- Does it come with a spare tire?
- Is mounting hardware included?
- Has "it" been approved before?
- Are your personnel qualified?
- Do you have references?
- Are you registered in CCR?
- Will you get a DUNS number?
- Does the pump include a coupling?
- Is mounting hardware included?
- Has it been approved by this city building inspector before? Where? When? Who?
- Where is the approved repair station?
- What are you going to do if it doesn't work?

*Is there a  
better way  
to ask ????*

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- Competition is a powerful friend!
- Collateral information and facts about product and other work
- Strike first
- Invitation to participate
- A comprehensive solicitation
- Ask the right questions
- Pick when and how to order
- This isn't my first rodeo

## Add Pressure



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- Who's problem is it?
- If it's not your problem, don't waste energy fretting about it
- Who is in the best position to solve the problem?
- Get the ball over the net and clearly in the hands of the person who can resolve it

## Serve The Ball



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- When is the best time to talk with a salesman on a commission?
- I'd buy today... if the deal was right
- I can sign the order now
- You mean .. you want to turn the deal down?
- I'd prefer to work it out ... rather than start over... with someone else
- This could lead to future business

## Motivation

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- How long is the included warranty?
- What is included in the spare parts kit?
- If we reach an agreement, I will.....
- Did you intend to reject the order? **Powerful Words**
- What payment discount did you offer?
- What do you want me to do with this [non] invoice?
- Are you telling me that you plan to breach the contract?

Ask for it!

Claim it!

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- I'm on your side, the boss won't like it
- Just one more thing after another
- I thought we agreed?
- It isn't in the budget
- The plumber principle
- Not our normal process
- Our Procedure/ policy won't allow it
- It's not in the contract

## Obvious Strategies That Do Work

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- No one does that...
- I know they don't ...
- Not normally what they do
- Seller will charge extra...
- I didn't think they could...
- It should ...
- I assume...



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- Change the terms
  - *If we agree to a 2-year purchase can we make a deal?*
- Change the people
  - *Is there someone who does have the authority?*
- A way to save face
  - *Blame it on a typo*
- A way to sell it
  - *This is a great opportunity for long term business*

## Break A Deadlock

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- I always ask for 10%
- Please – because you like me
- I just have one more thing
- Losing control of the negotiation
- Negotiating with the wrong person

## Poor Practices Too Avoid

*Companies  
can have  
bad habits  
as well as  
people*

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- Make a checklist & refer to it often
- Identify important issues
- Confirm assumptions – check facts
- A cheat sheet of good questions
- Build the contract as you go
- Communicate often and effectively
- Anticipate and prepare
- Failure analysis

## Personal Action Plan

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- **Good Buyer**
  - Makes decisions ahead of time
  - Avoids the cow pies
- **Good negotiator**
  - Consistently reaches an agreement
- **Win-win negotiator**
  - Good buyer and seller relationship
- **Ethical negotiator**
  - Earns respect – not revenge
- **Great Negotiator**
  - = all of the above

## Recap

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## We Are Better Negotiators!

*We can win the war without  
fighting a battle*



Picture Page Layout

**Assembling a better contract**  
*Isn't that what we always wanted?*

## Contractor Responsibility Checklist

Item	O.K.? Y/N	Criteria	Comments
1.		3. MANDATORY CRITERIA – items unique to the action or process	
2.			
3.			
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## References & Resources

- Negotiation articles  
[www.mltweb.com/tools/tools.html](http://www.mltweb.com/tools/tools.html)
- Negotiation presentations and handouts  
<http://www.mltweb.com/handouts/index.htm>