



Negotiating Without Giving In

Ben Sachs
ICAA Convention
September 29, 2023



What are we up against?

Competing against
low-priced insulators

Cancel for
convenience
clauses

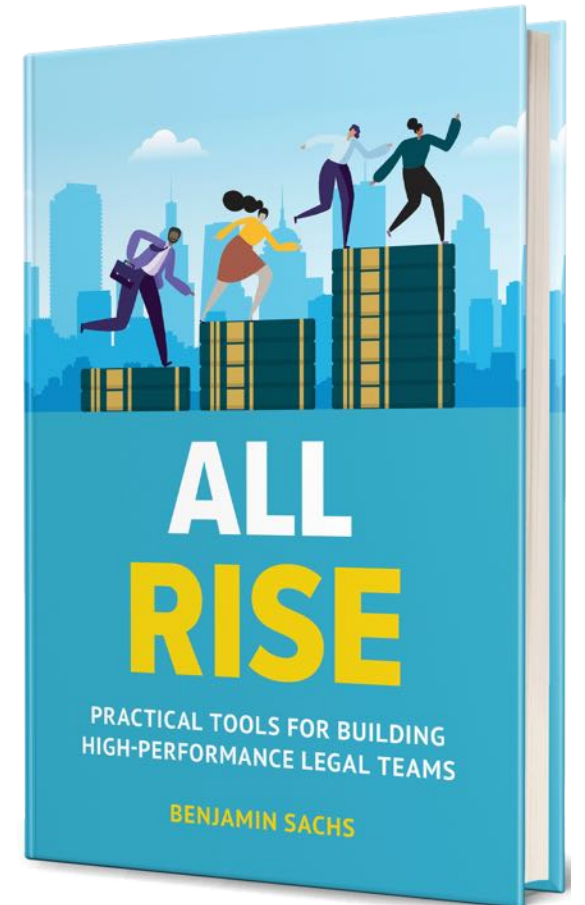
Aggressive
retention clauses

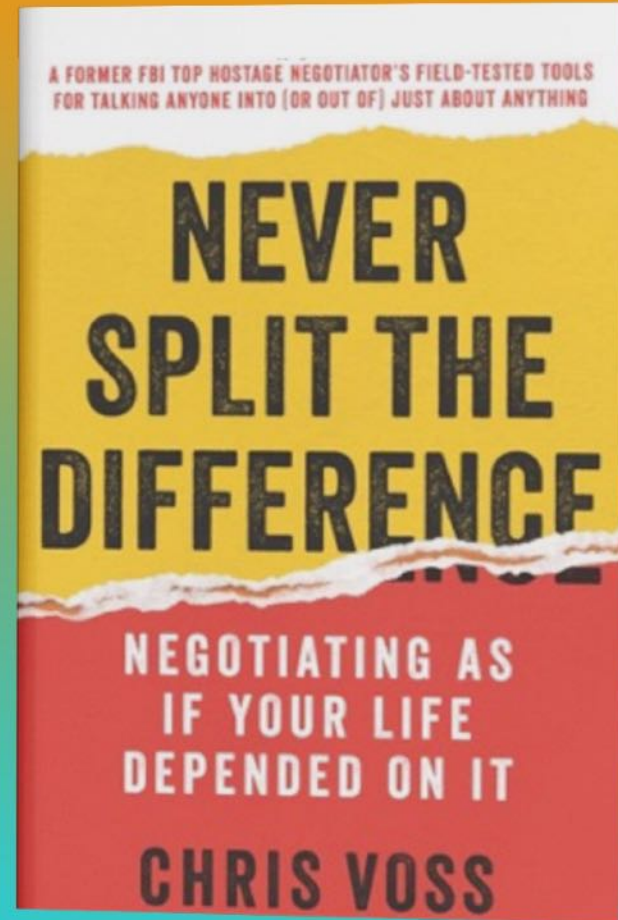
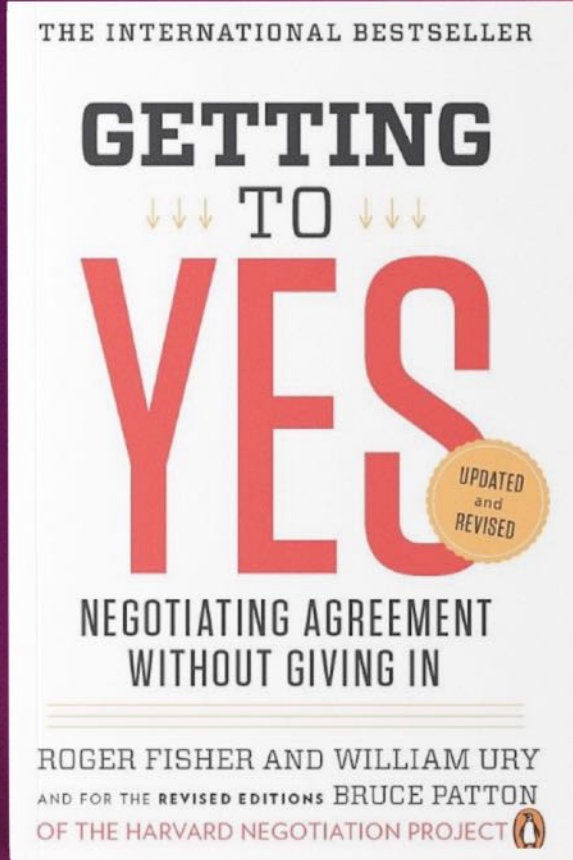
Unpredictable
vendor pricing

Electronic bidding
platforms

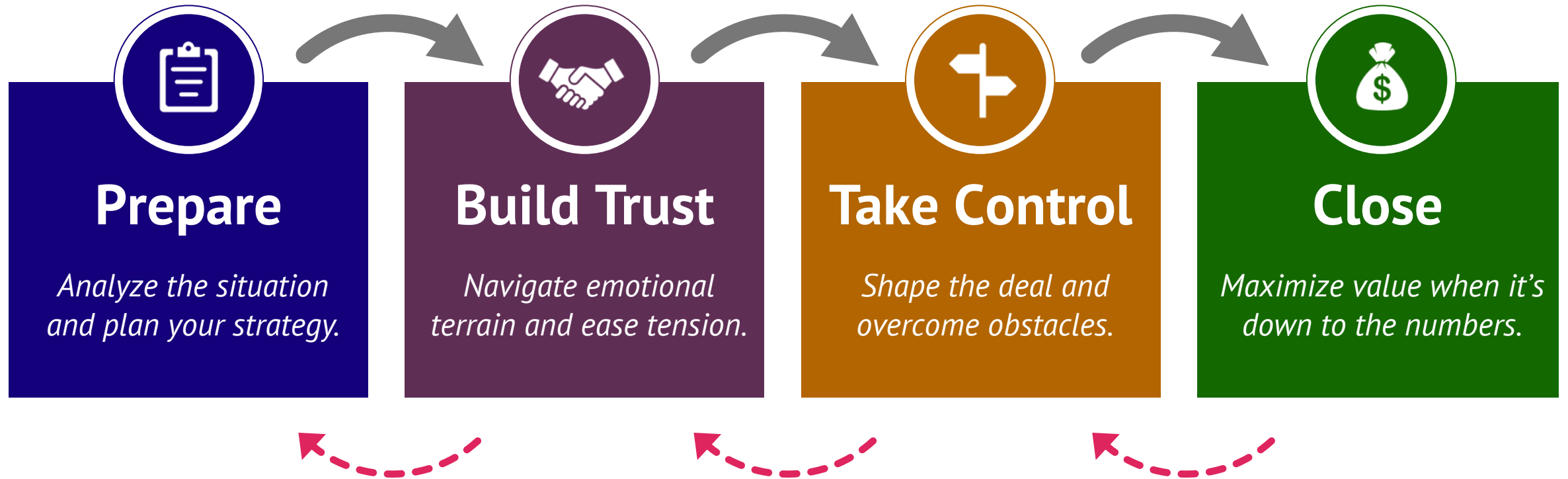
A little bit about me

- Professor of negotiation at UVA Law School
- President of The Landing Group
- Board Member of Evergreene Homes
- Author of All Rise: Practical Tools for Building High-Performance Legal Teams





Four Stages of Dealmaking



Four Stages of Dealmaking



Prepare

Analyze the situation and plan your strategy.

- Interests & Options
- Objective Criteria
- Your Goals
- Talking Points



Build Trust

Navigate emotional terrain and ease tension.

- Mirroring
- Earn a “That’s Right”
- Labeling
- Accusation Audit



Take Control

Shape the deal and overcome obstacles.

- Pivot Questions
- No-Oriented Q’s
- Test for Truth
- Name the Game



Close

Maximize value when it’s down to the numbers.

- Offer Formula
- Polite Rejections
- Time as a Weapon
- Signal Best-and-Final

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▶ The Orange Story

Focus on *interests*, not positions

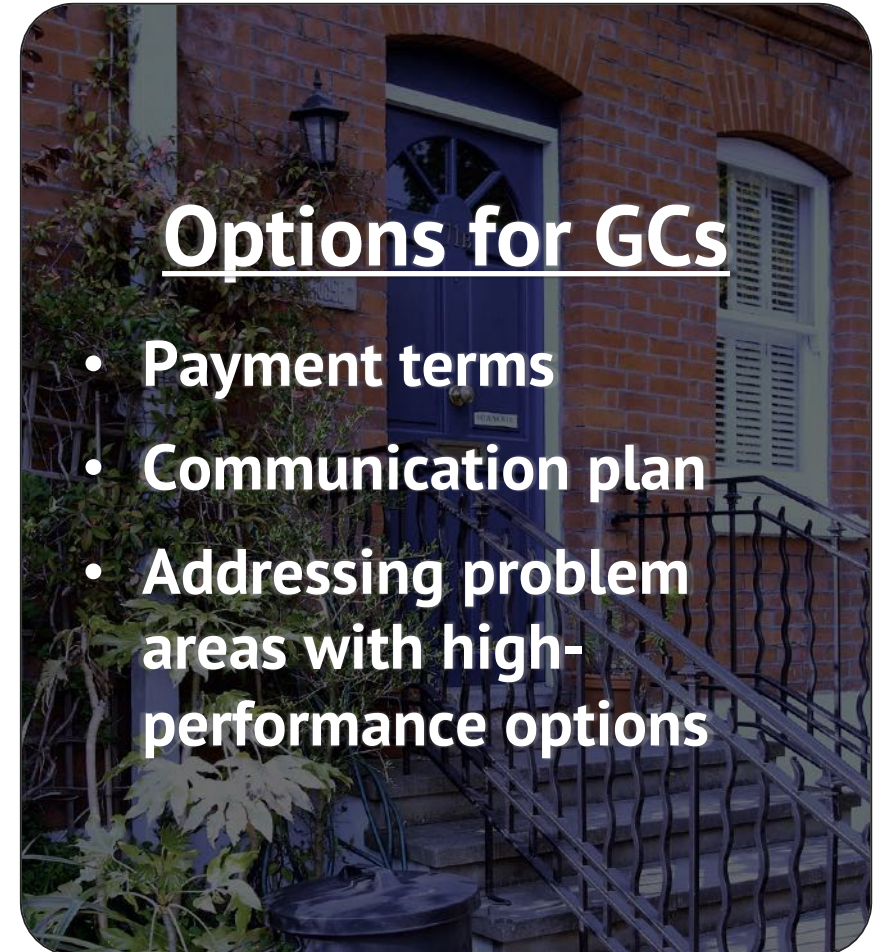
- Remember the Orange Story
- Ask questions
E.g., “Why is that important to you?”
- Applies to both GCs and vendors

Interests of a GC

- Profit margin
- Quality
- Showing up on time
- Proactive communication
- Not babysitting subs
- Avoid headaches

Brainstorm *options* to meet parties' interests

- Look beyond the obvious
- Frame upsells in terms of benefits to them, not costs
- Great negotiators are **CREATIVE**



Write your talking points (don't wing it!)



1. Brainstorm tough questions they might they ask and prepare responses
2. If you're going to make an offer or ask, script out how you'll present it
3. Draft your get-out-of-jail-free cards:
 - Pivot questions
 - Accusation audit

More on these tools shortly

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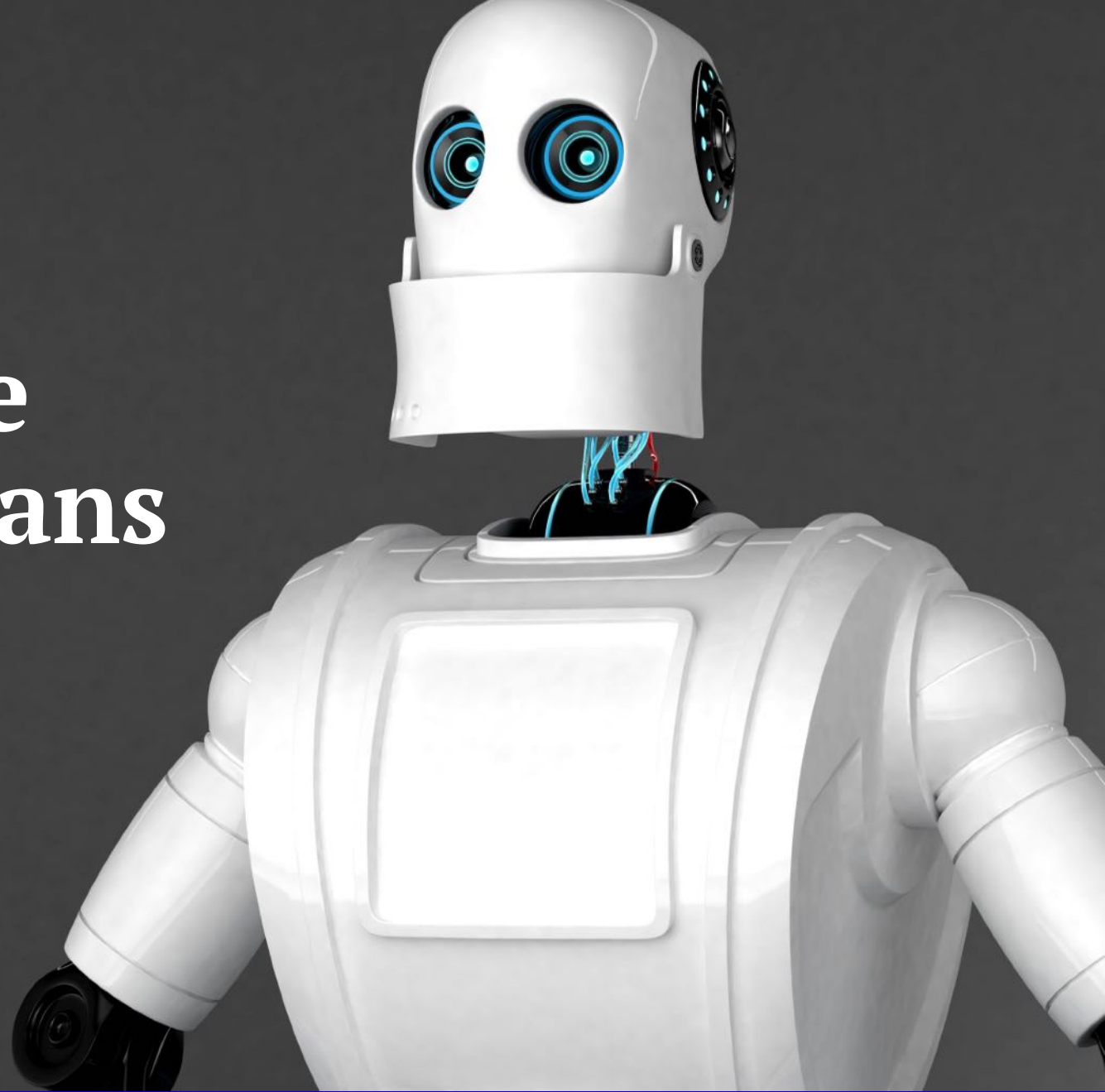


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**Remember, we are
dealing with humans**



Leverage psychology in negotiation

- **Anchoring:** Opening offers can have a major impact on later decisions
- **Similarity:** We are drawn to what's similar and fear what's different
- **Fair Process:** People will accept less if they feel the process was fair
- **Self-Determination Theory:** Humans innately desire autonomy, competence, and being understood
 - *And the opposite is true: We do not want to feel **powerless**, **incompetent**, or **misunderstood***

Active Listening:

Salespeople who *listen* more *sell* more

1. Listening builds trust
2. Listening promotes empathy
Everyone has an interest in “being heard”
3. Listeners get *information* to unlock deals

Your goal: get them to say, “That’s right!”



Active listening through **mirroring**

Repeat back the last (or critical) 2-3 words the person said to encourage elaboration

- *GC: We have an aggressive timeline on this project.*
- *You: Aggressive timeline?*

Mirroring is the closest one gets to a Jedi mind trick. Simple, and yet uncannily effective.

- Chris Voss, FBI Hostage Negotiator



- ▶ Great negotiators view every situation from the *other side's perspective*

Peel back a layer through **labeling**

The Technique

When the other side is holding back, a label can get them to open up

- “It seems/sounds/feels like _____”
- Even *mislabels* can unlock information

Examples

- *It feels like you are frustrated with how long this is taking.*
- *It feels like you have a specific reason for wanting that clause.*
- *It seems like you are focused solely on price.*

Defuse tension with an **accusation audit**

The Technique

Preempt the worst things they might be thinking about you

- “You probably think _____”

Examples

- *You probably think I am arguing every point, no matter how small.*
- *You probably think I am just trying to hike up the price with upsells.*

Your best tool is **patience.**

Drop your

mirror,

label,

or accusation audit,

then **let silence do the work.**

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Pivoting with How/What Questions

When faced with a difficult response, pivot to get more information

- Pivot to **interests** » *What makes you ask?*
- Pivot to **options** » *That's one solution. What other ways could we solve this?*
- Pivot to **criteria** » *How did you arrive at that number?*

The key is to start with *what* or *how* (& sometimes but rarely *why*)

- Yes/No questions do not reveal much information
- Avoid: *Can, Is, Are, Do, Does*

Sample pivot questions to surface issues

- What are your goals on this project?
- What are your biggest concerns / challenges?
- How important is this clause compared to the others we've discussed?
- How does this affect the rest of your team?
- What makes you ask that?

FYI: Chris Voss calls these “calibration questions”

Sample pivot questions to surface issues

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Earn a “No”: A verbal trick to get agreement

People are weary of saying “yes”

- *“Do you want your family protected in the event of your death?”*
- *“Would you like a better return on your marketing spend?”*

But “no” comes more easily, so rephrase your questions for a “no”



Turn “Yes” Questions into “No” Questions

“Yes” Question

Is now a good time to talk?

Are you open to discussing payment terms?

Want to talk on the phone?

Are you still interested?



“No” Question

Is now a bad time to talk?

Are you against discussing payment terms?

Would it be a waste of time to hop on a call?

Have you given up on this project?



Test for Truth

How to politely ask for proof

- *“If you share that with me, I’ll think it over.”*
- *“I’m really sorry, you sound sincere, but I can’t consider that unless I can verify it independently.”*

If they waffle, don’t call them out for lying

- Let them save face and return to the table
- Goal: Cut through lies without burning the liar



Name the Game:

A last resort for bad behavior

Use a neutral tone while labeling what you are seeing

- *“It seems like you’re trying to get me to bid against myself.”*
- *“You said you can’t share the prime contract but keep referencing its terms.”*

- ▶ Remember, your job is to *defuse* the situation, not *destroy* your opponent

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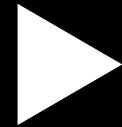
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Real world examples



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“I don’t have authority for that.”

- “Don’t have the authority?”
- “It sounds like you are powerless over the terms here.”
- “Who else needs to be looped in?”



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“We need cancellation for convenience.”

- “What might lead you to cancel?”
- “How do I ensure I am paid for work already completed?”
- “What does the prime contract say about cancellation?”
- “It sounds like you’re going to walk away unless you get this clause.”



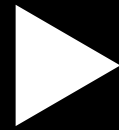
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“What discount can I get?”

- “Discount?”
- “It sounds like you don’t think the price is reasonable.”
- “What would you say is a ‘fair’ discount?”
- “Are you saying without a discount, we won’t be able to do the deal?”



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▶ Vendor negotiations

- “How can I pay you in 30 days if the GC isn’t paying me for 60?”
- “We aren’t winning deals. What can we do to be more competitive?”
- [After showing your backlog...] “How can we work together to make this happen?”

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Signs we've entered the “haggling” stage

- ✓ Have you agreed on general scope?
- ✓ Are they throwing out round offers without objective criteria?
- ✓ Are they making nonspecific threats about walking away?



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Target Offer: Signal you are at your limit

- **Use precise, non-round numbers**
(e.g., “\$87,225”)
- **Include a nonmonetary throwaway**
(e.g., “...and you can use our logo”)
- **But don’t actually say “best and final”**
(if you offer less later, you lose credibility)



Polite Rejections: Let them bid against themselves

- **Find different ways to say “no”**
 - *“Your offer is very generous. I’m sorry, that just doesn’t work for me.”*
 - *“I’m sorry. but I’m afraid I just can’t do that.”*
 - *“How am I supposed to do that?”*
- **Deliver politely and succinctly.**
Then *let silence do the work.*



Closing Strategy Template

1. Set your first offer above target
2. Plan for 3 additional, *decelerating offers* to get to your target price
3. After each offer, use active listening, pivot questions, and different ways of saying no to get the other party to *bid against themselves*
4. When you are ready to deliver your target price, signal you are at your limit with *precise numbers* and a *nonmonetary throwaway*

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Further Reading

- Chris Voss, *Never Split the Difference: Negotiating As If Your Life Depended On It* (2016)
- Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (rev. 2011)
- William Ury, *Getting Past No: Negotiating in Difficult Situations* (rev. 1993)
- Douglas Stone, Bruce Patton, and Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most* (2010)
- Richard S. Gallagher, *The Customer Service Survival Kit: What to Say to Defuse Even the Worst Customer Situations* (2013)

THE LANDING GROUP

Questions?

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About The Landing Group

➤ THE LANDING GROUP

The Landing Group provides consulting and training services for business and legal professionals, with programs across all aspects of management, strategy, negotiation, and communication.



Ben Sachs, President of The Landing Group, is an expert in management, strategy, and negotiation and the author of the Amazon bestseller, *All Rise: Practical Tools for Building High-Performance Legal Teams*. In addition to serving on the faculty of the University of Virginia School of Law, Ben previously served as Chief Operating Officer and General Counsel at Storyblocks, a media and technology company. With a background in law and business, Ben has consulted for government and private sector organizations in the United States and Australia in industries ranging from telecommunications to retail. Prior to Storyblocks, Ben served as a litigator at Sidley Austin LLP and as a strategic management consultant at the Boston Consulting Group.