

A guide to interest-based negotiation

Do you know how to undertake an interest-based negotiation?

What is this tool?

This tool aims to help you to secure the resources or partnerships you need to commercialise your technology solution by helping you understand how to undertake an interest-based negotiation.

What is an interest-based negotiation?

An interest-based negotiation uses a collaborative and problem-solving approach. It aims to build credibility and trust between negotiating parties for mutually acceptable outcomes for all parties involved.

Why use this tool?

There is not one single style or approach to effective negotiation. In fact, there are different negotiation approaches for different situations and contexts, ranging from a 'win at all costs' approach (i.e. hard negotiation) through to relationship-based approaches (i.e. soft negotiation).

See **Figure 1** for more information.

There are several potential benefits in applying interest-based negotiation, including¹:

- **better solutions:** parties have open communication, enabling informed decision making
- **stronger ongoing relationships:** parties work together for a common purpose, resulting in shared goals and interests and mutual respect
- **increased respect and trust between the negotiating parties:** parties are open about their interests and have no hidden agendas.

¹ Adapted from Fair Work Commission 2020. *Guide to interest-based bargaining*. Australian Government <https://www.fwc.gov.au/documents/documents/cooperative-workplaces/guide-interest-based-bargaining.pdf>



Goal: Win	Goal: Reach an outcome efficient and amicably	Goal: Achieve an agreement
Treats the other negotiating party(s) as an adversary	Treats negotiation as a collaboration and a problem to be solved	Acts like a friend to the other party(s)
Demands concessions from other party(s) and insists on their position (no compromise)	Focuses on the different interests of the parties, not their positions (focuses on issues not people)	Makes concessions and changes position easily to avoid a contest of wills. Cultivates and maintains a relationship with the party(s)
Uses pressure to influence other party(s)	Separates the people from the issues	Yields to pressure from other party
Parties hide their own bottom line from others	All parties proactively identify and agree on solutions that acknowledge mutual and individual interests, rather than positions for mutual benefits	Discloses their bottom line
Distrusts other party(s)	Focuses on an objective or specific criteria	Focuses on building trust
	Open to reasoning and negotiating with other party(s) to find an answer acceptable to all	Actively searches for an answer the other party will accept

Figure 1: Continuum of negotiation styles

Source: Adapted from C2 Solutions (2019) Elevate – Negotiating using the C3 Value Story handout.
https://www.poweredbyc2.com/wp-content/uploads/2019/06/Negotiation_Styles_Handout_2019_FINAL.pdf



Tip

Be flexible and adaptive. No two negotiations are ever the same.

How to use this tool

There are two generic phases for any negotiation:

- Preparation phase:** gathering intelligence, organising data and generating ideas to develop strategic and tactical plans
- Negotiation phase:** implementing your strategic and tactical plans and reaching a formal conclusion to the negotiations.

Every negotiation will follow a slightly different path within these phases, depending on the negotiating parties and the complexity of the situation.

Steps

The following steps and tips will help guide you through a negotiation process from a principle-based perspective.



Tip

Prepare by identifying individual positions.

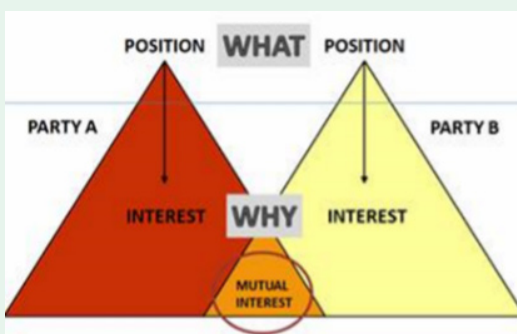
Start by focusing on your positions/interests before trying to understand the other parties' interests. Being able to clearly communicate and focusing on interests and mutually beneficial outcomes is important for effective negotiation.



Note

Position = *what* people want

Interest = *why* they want it



You can do this by asking questions about the risks and opportunities of a particular position, as this opens an opportunity for people to explain why (i.e. explain their interests).

Preparation phase

Gathering intelligence, organising data and generating ideas to develop your strategic and tactical plans.



Step 1. Understand your starting point

With your research team or key stakeholders within your institution (e.g. Technology Transfer Office, legal experts, IP experts, senior management, finance etc.) brainstorm which outcomes are considered a must have (essential) versus nice to have (desirable but not essential) for your organisation.

This is important because all parties must manoeuvre within their own positions, interests and goals. Each will have points that cannot be compromised. These points are sometimes referred to as a 'red line' or a 'no-go' issues.



Step 2. Consider the other parties' expectations and needs

With your research team or key stakeholders within your institution (e.g. Technology Transfer Office, legal experts, IP experts, senior management, finance etc.) explore what you know about the possible risks and opportunities for the other negotiation party. Use these to identify which risks may be mutual, and those which are potentially competing against your interests.

Taking time to reflect upon this before you start the negotiation phase (and during the negotiation itself) can be useful to understand what the other party wants and why they want it.



Tip

Consider a team approach to the negotiation discussions.

Remember that relationships are based on trust and myriad common interests and objectives. Before each stage of discussions, think about who needs to be in the room and when. On some occasions, it may be appropriate to exclude your lawyers from the negotiation to allow for more informal discussions. While lawyers are important members of the team, it can best to use them to objectively and independently review the outcomes.



Note

Throughout the negotiation, continually review your position, interests and goals, as well as those of the other parties.

Be alert to any indications that a shift in priorities may have occurred during your negotiations. Remain open and responsive to such changes and consider how you can accommodate them as the negotiation evolves.

The aim of an interest-based negotiation is to be flexible so you can find mutually agreeable solutions (i.e. solutions that meet the objectives and interests of both parties).



Step 3. Develop strategies for communicating your position and interests

With your research team or key stakeholders within your institution (e.g. Technology Transfer Office, legal experts, IP experts, senior management, finance etc.) brainstorm strategies for communicating your position clearly and objectively during the negotiations.

This activity will help you begin the negotiating process by outlining your goals, positions and interests. It also helps you understand where there is more or less flexibility to negotiate, without being prescriptive.

If there is more than one person representing your interests at the negotiation, it is important that you all have a shared understanding, including:

- how you will share information with the other party
- if there is a 'red line' or no-go point, and where it is
- what is nice to have, but can be negotiated.

Building trust between those on the same team is an important part of an interest-based negotiation process. Planning together in advance can help avoid behaviours that undermine the trust building process, both within the team and with the other negotiating party.



Tip

Use a formal confidentiality agreement if you think it will help build trust.

If you have confidential information or commercial in confidence information that needs to be discussed, use a confidentiality agreement to help open the conversation and build trust between the parties involved in the negotiation (See [Step 4](#)).



Tip

The little things matter.

If you are hosting the negotiation, consider providing food and drinks. Seating arrangements and breaks can be also used to your advantage to help the other parties feel at ease (sometimes the best negotiations are done in the breaks!)



Tip

Focus on building a trusting relationship based on fairness and equity.

While both parties will strive to achieve their own interests (and those of the other party) neither is expected to give up its interest. However, they should be open to finding mutually beneficial solutions to achieve an agreement.

Negotiation phase

Implementing your strategic and tactical plans and reaching a formal conclusion to the negotiations.



Step 4. Open discussions by clearly communicating expectations and agreeing on the rules of engagement

It is important to open the negotiation conversation so that people feel at ease expressing both their position and their interest.

All parties want to feel fairly treated.

Clearly communicating and agreeing on the 'rules of engagement' early can help to avoid problems later. Invite each party to start by sharing an opening statement outlining their interests and potential issues.

Tensions can also arise if one party is in possession of more information than the other (asymmetric information).



Note

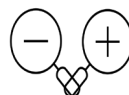
It's often easier to start discussing and agreeing upon shared positions and interests (also known as an 'easy win'). Once some of these points are settled, you can move on to competing interests and positions. Working on shared interests first can help build an early understanding of the shared value from the collaboration, which can make it easier to reconcile competing interests later on.



Tip

Remember to listen

People can get caught up communicating their own positions and interests and as a result they forget to listen. It is OK to pause, be silent, listen and observe body language.



Step 5. Discuss in detail each identified position and interest to develop a range of potential solutions for each one

Once the positions and interests for each party and the rules of engagement are clear, it is time to discuss the details around each individual position or interest. Where possible all parties should be encouraged to:

- share any information they have about an interest to enable open and transparent conversations
- be creative when problem solving in regard to conflicting positions and interests
- consider what, why, who, when and how; these can help you determine whether a possible solution is practical and make adjustments where necessary.

It's often easier to start with the agreed shared positions and interests and then move on to competing interests and positions.

Collaborating on shared interests first can help build an early understanding of the shared values which can make it easier to reconcile competing interests later in the negotiation.



Tip

Base problem-solving strategies on principles, assumptions, steps and techniques to achieve positive results for all parties.

These include:

- focusing on issues, not personalities
- focusing on interests, not positions
- creating options to satisfy both mutual and separate interests
- all parties should help each other win
- keeping discussion open and expanding on mutual interests and options.



Tip

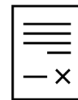
Be aware of non-verbal communication!

A misplaced or misunderstood nod or gesture can lead to mistakes that damage relationships. For example, a nod or shake of your head could be used as a polite gesture, instead of being understood as acceptance or rejection of a proposed solution.



Step 6. Mutual agreement

It can take time to reach a point where all parties reach mutual agreement. This is achieved when all parties have a common understanding and agree on the specific terms and conditions on which your technology solution will be commercialised.



Step 7. Draft an agreement

Work with legal experts to draft an agreement that captures the mutually agreed outcomes and the associated terms and conditions.

It is important to share the draft with key stakeholders and experts, such as IP specialists and contract lawyers before you finalise any agreement.

This may take time but their knowledge and perspectives are invaluable. They can help you be confident that the agreement is mutually agreeable for your institution and other parties. If you need to make changes based on the legal team's opinion, then you will need to have further discussions with all parties in the agreement.

Be careful of substantially changing the agreement's intent without discussion, as this can break trust.



Tip

Stay open and interest focused. Separate people from problems.

Ask yourself what you would want if you were in the other party's position.

Always remember your outcome. Don't become stubborn and take a position that limits your ability to move or change direction.

During interest-based negotiations, parties aim to²:

- communicate their interests clearly
- genuinely try to understand the interests of others
- collaborate during problem-solving
- share as much relevant information as possible
- be objective and rational when evaluating options against criteria they have decided on together
- be respectful and avoid coercive methods.

² Source: <https://www.fwc.gov.au/issues-we-help/cooperative-workplaces-program/interest-based-bargaining>



Step 8. Finalise and sign the agreement

If you are not the person with the financial delegation to sign the agreement, ensure you have briefed the relevant authority for your organisation and that they are comfortable signing the agreement.



Tip

Don't aim for what you think is perfection. Instead aim for the best outcome given the facts and circumstances for both parties.