What's Your Non-Negotiable List As A Buyer?

One of the most important things you can do to prepare for an M&A or business transition is to create a **non-negotiable list**. This is a list of items that need to be true before you would proceed with a plan to buy, sell or transition your business. It should be detailed and **ONLY** contain items that are go/no go factors. Nice to have items can be listed below the non-negotiable list, but the actual list should contain only those things, no matter how many or few, that would kill a deal and stop the process immediately.

Without a doubt, **emotional responses** are one of the biggest challenges that must be overcome to successfully complete a deal. Emotions can kick in at any point along the journey, so the more you have thought through and prepared for those trigger areas, the more likely you will not have a significant emotional response to things as you progress through the process.

Things are different, yet the same as a buyer. Being prepared by thinking through the things that are a must will help remove emotion.

Another very valuable use of a non-negotiable list, is to filter the interest level of potential buy or sell side prospects. If you are like many small business owners, your inbox is regularly filled with unsolicited emails from potential suitors looking to find someone interested in a conversation. When I was running HTS, the IT company I led for 27 years, I would frequently have solicitations to buy the company. At first, I would reply and have a few conversations via email or the phone only to find out that there was no real opportunity as their offer, expectations, timeline or other factors were not aligned with ours, so the investment of time was a total waste.

As a tool to help mitigate that time sink, I used my non-negotiable list as a way to screen potential candidates on both the buy and sell side of deals. When someone would approach us about purchasing our company, my immediate response was to send them our non-negotiable list. Typically, I would never hear from them again saving significant hours of time and energy which I would have expended to end up in the exact same place – a deal that would not happen.

It is important to make sure the items on the list truly are non-negotiable. I would separate the 'nice to have' from the 'must have' so your list does not scare every potential buyer or seller away.

In my experience, having done eight buy side and three sell side transactions, it is one of the most important tools I have seen to make the M&A transition process effective. I have shared the idea with many people, and they often come back saying 'that didn't seem like an important thing to do but it ended up being extremely important in helping me get my deal done'. Sometimes the simple things are the ones that truly matter the most.

The true value is taking emotion out of the process as much as possible. That is what a non-negotiable list can do for you.

Here are some items you might consider when creating your non-negotiable list as a buyer:

1. **Price** – know the number but share a range with not to exceed as the top number. If you are far apart, it is unlikely to be a deal that will close.
2. **Stock vs. Asset sale** – do you require one or the other? If so, do you know the why?
3. **Clear title** – are you willing to allow any encumbrance on the stock or assets you would acquire?
4. **Deal structure –** are there requirements around cash/escrow/owner note/earn out/stock?
5. **Contracts –** are you willing to assume all existing contracts of the seller?
6. **Asset classification –** are there requirements for how the assets will be classified across the seven different taxation types? (huge tax impact)? Form 8594 must be filed by both buyer and seller.
7. **Due diligence –** are there requirements for who will execute and pay for this, and the timeline upon which it will be done?
8. **Working capital –** do you have expectations around the amount of working capital to be left in the business?
9. **Complete transition vs. partial ownership –** do you want to have an entire transition or will you offer a "second bite of the apple" by allowing retention of some amount of ownership?
10. **Timeline –** is there a firm date by when the close needs to occur (can be due to tax law or other personal factors)?
11. **Post Transition involvement –** do you require the seller to stay engaged post event and if so in what manner, for how much, and for how long?
12. **Board of Directors** – will you offer a seat on the board of directors and if so for how long?
13. **Culture and core value alignment** – are there areas that will have to be in alignment to move forward?
14. **HR and benefit alignment –** are there areas of HR or benefits that must be transitioned to your current plan?
15. **Key employees –** are there people in the acquired company that are required to stay as part of the transaction?

This list contains many areas to think about. But the outcome is so much better when you take time to consider these areas, as it helps take emotion out of the deal and that is typically what causes problems and often deal failure. Do not create your list in a vacuum. Talk through it with key stakeholders and **WRITE IT DOWN**. Even if you never share it with potential suitors, it can help prepare you and guide you through the negotiation process.

I always shared it with potential deal makers, as well as my team of external advisors, so we were all on the same page. Whenever I would stray a bit from the list, they could quickly point to that and help keep me on track. It is a valuable tool I can't encourage you enough to create.

The concept behind a non-negotiable list for either the buyer or seller is to shorten the time wasted with potential prospects where the differences will never come into alignment. If you think your company is worth $2M and I think it is worth $500K, the odds are between slim and none that we'll come to agreement. Might as well discover that up front rather than waste days or weeks only to get the same answer.