

Negotiating Term Sheets

Summary Term Sheet

- Valuation (pre-money typically).
- Amount of investment (but non-binding).
- Form of investment (notes, common, preferred).
- Protective provisions (sale, M&A, liquidation, other).
- Use of proceeds.
- Board representation.

Summary Term Sheet (continued)

- Key employee provisions.
- Redemption.
- Information rights.
- Covenants and representations.
- Expenses.
- Closing date.
- No shop (beware!).

Negotiating Tips

- Be prepared – do your homework.
- Understand what is needed to close.
 - Both sides have an objective.
 - Both sides need to “win”.
- Be creative.
 - Offer innovative solutions.
 - Add value to their team.
- Leave ego out of the deal.
 - Negotiation entails compromise.

Negotiating Tips (continued)

- Be consistent – you may meet again.
- Never bluff.
 - Bluffing rarely works.
 - Failed bluffing makes you look foolish.
- Learn how to close.
 - Ask for it.
 - Get to a “yes”.

Negotiating Tips (continued)

- Don't take everything the other side says at face value.
 - May be posturing.
 - Need to know when their 'bottom-line'.
- Anticipate the investor's next step.
- Look to the future, not the past.
 - Don't try to close based on a past deal.
 - Make deals on where the market is going.

Term Sheets - Summary

- Non-binding details of the basis upon which an investor is prepared to invest.
- Negotiable, but with fairly significant limitations.
- Generally fairly short time frame before it becomes stale.
- May request “no-shop” which is limiting to the entrepreneur.