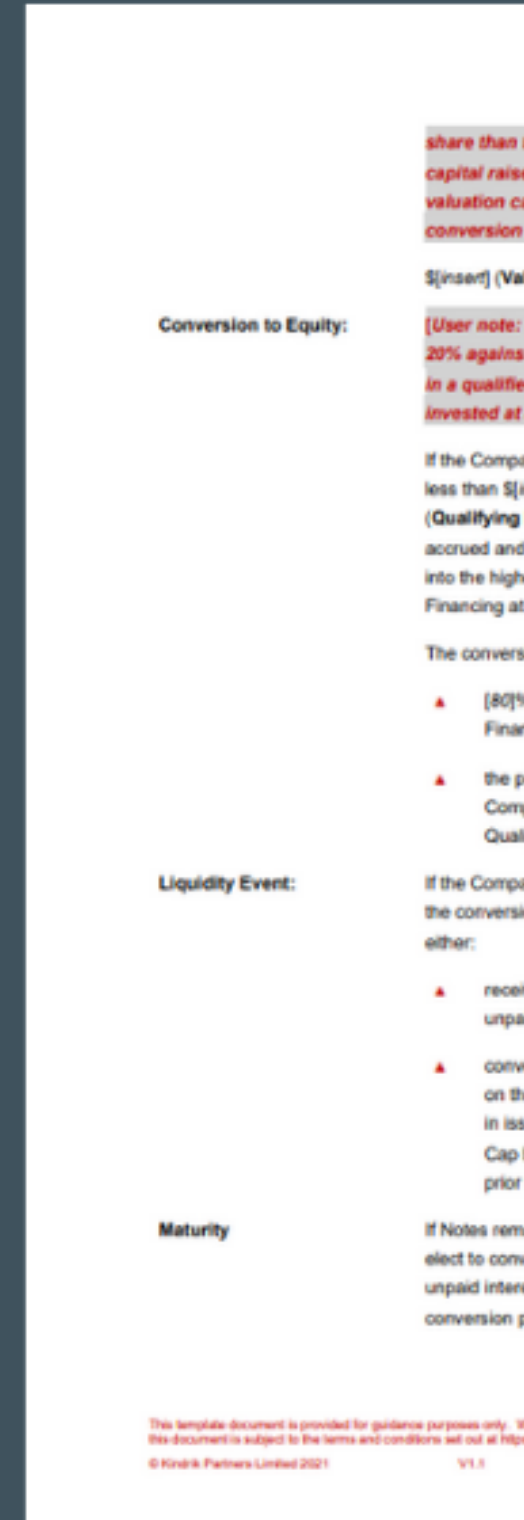
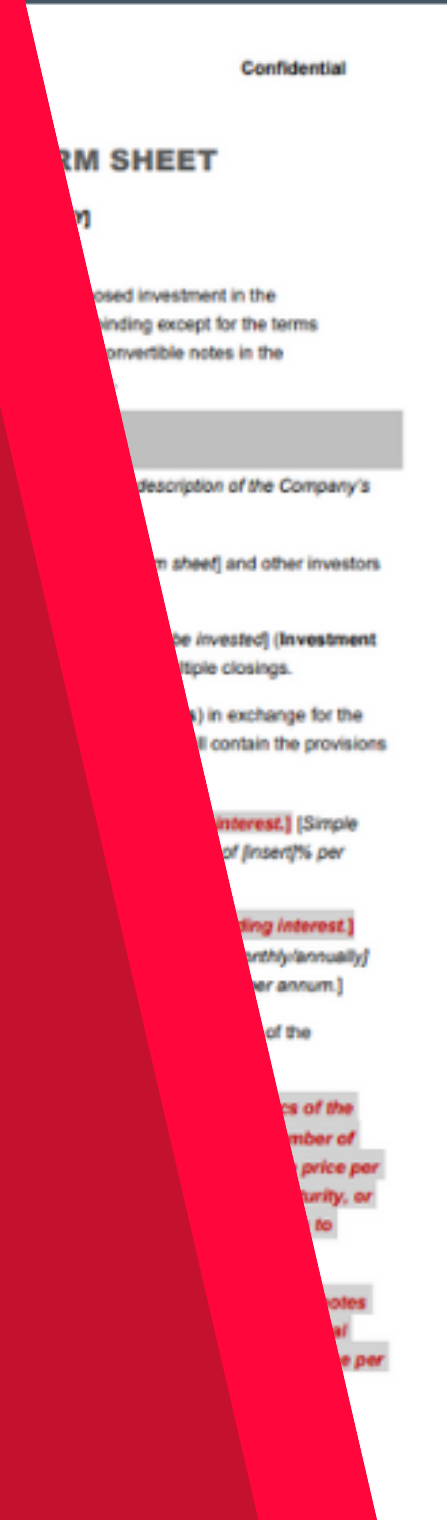


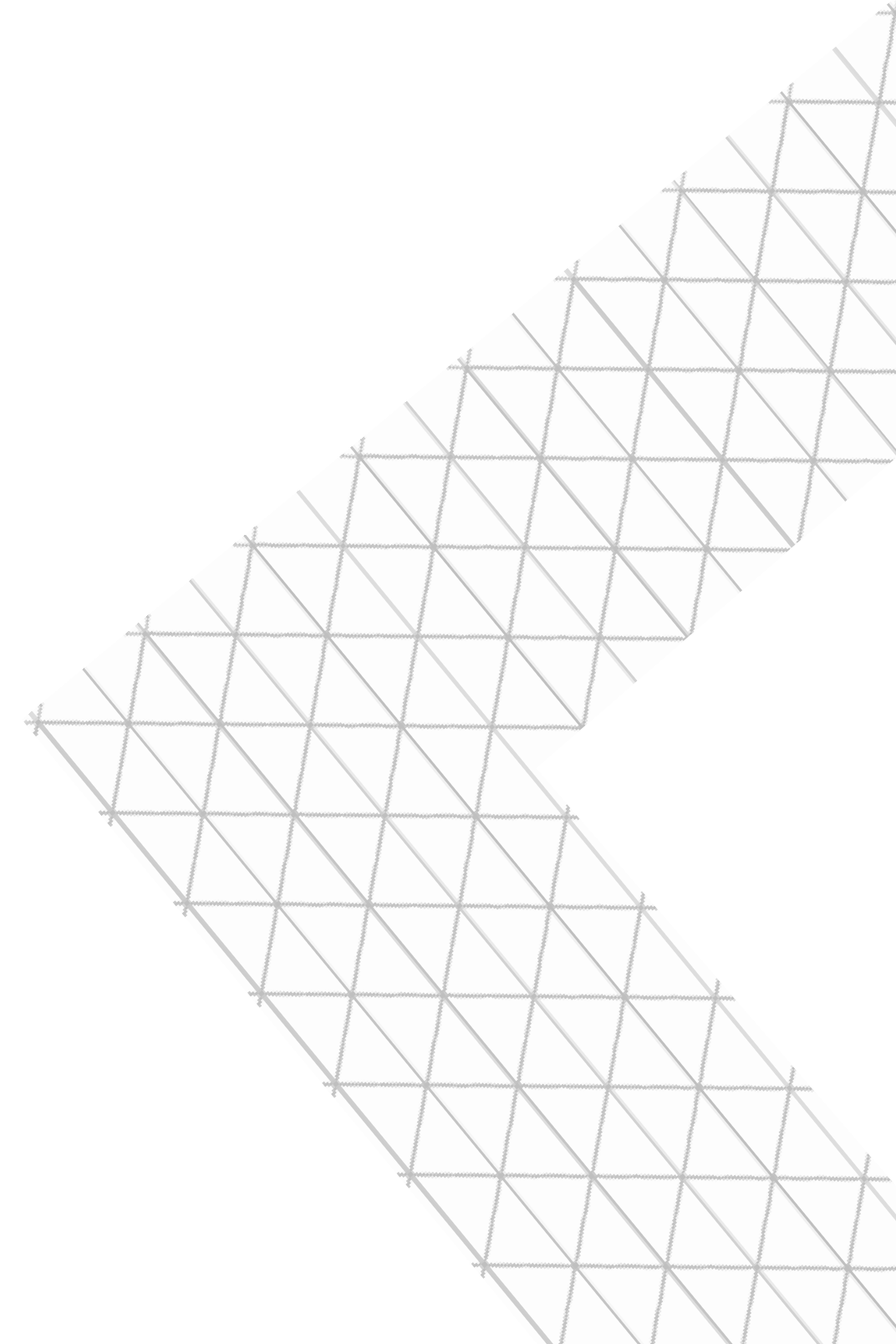
# TOP 10 LEGAL TEMPLATES FOR STARTUPS

A guide for companies based in New Zealand



# introduction

Founders often ask us what documents they really need for their startup. This guide introduces the key legal documents startups might require, and sets out some key considerations and tips for each document. We hope this will help founders prioritise and budget efficiently for their legals.



# getting started

## **Constitution**

Use when you incorporate your company

## **Shareholders' agreement**

Sets out matters relating to the governance of the company and the relationship between the shareholders

## **Founder agreement**

Use when putting in place share vesting arrangements for founders

# commercial

## **Independent contractor agreement**

When you're hiring a contractor

## **IP assignment**

When transferring IP from founders or employees to the company

## **Privacy policy**

When collecting, using and disclosing personal information on your website

## **Website terms of use**

When designing and building your company's website

# growth stage

## **ESOP**

Setting up an employee share option plan

## **Convertible note**

When raising capital by way of convertible debt

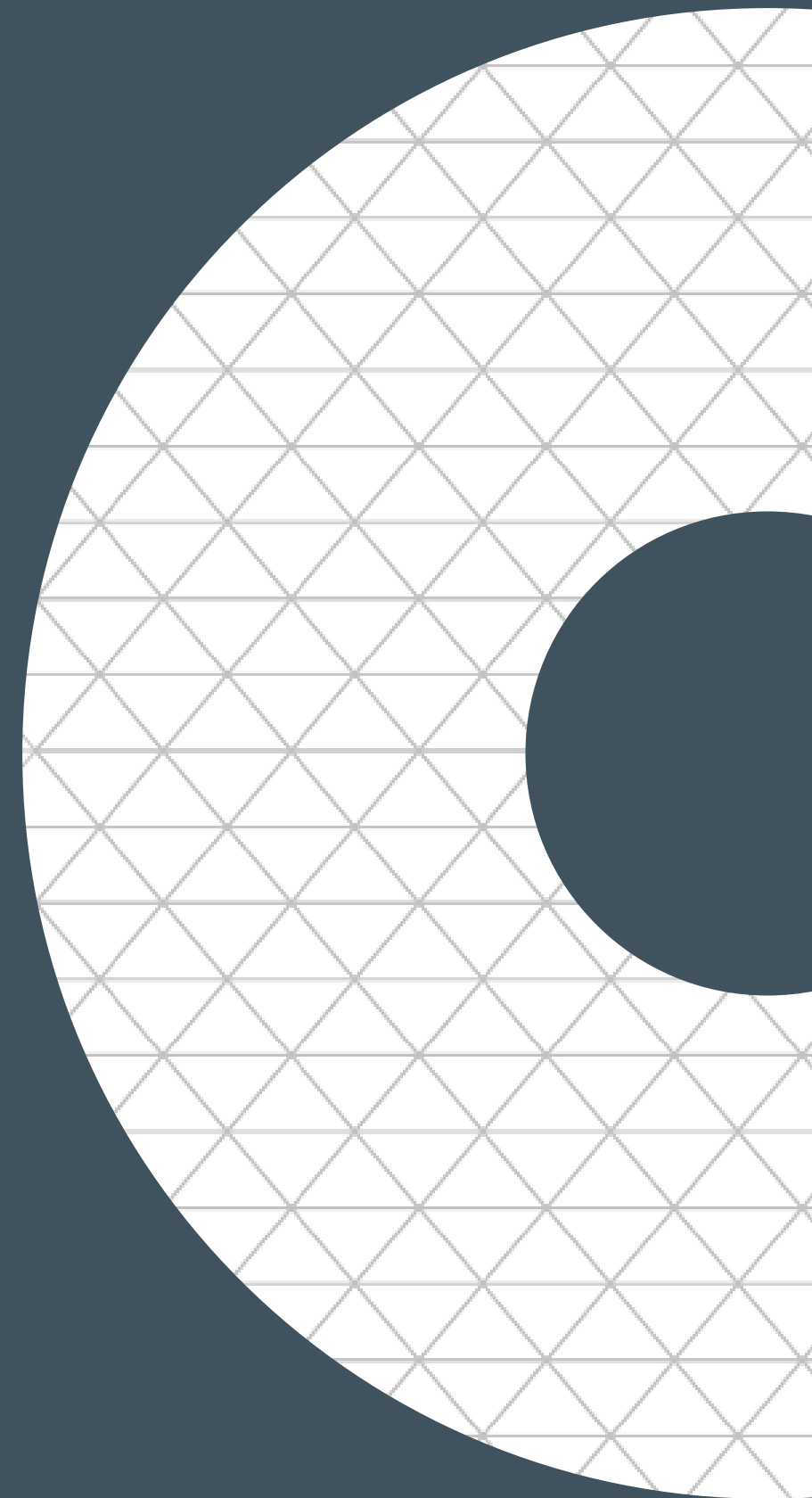
## **Term sheet - simple investment**

When raising capital by issuing shares

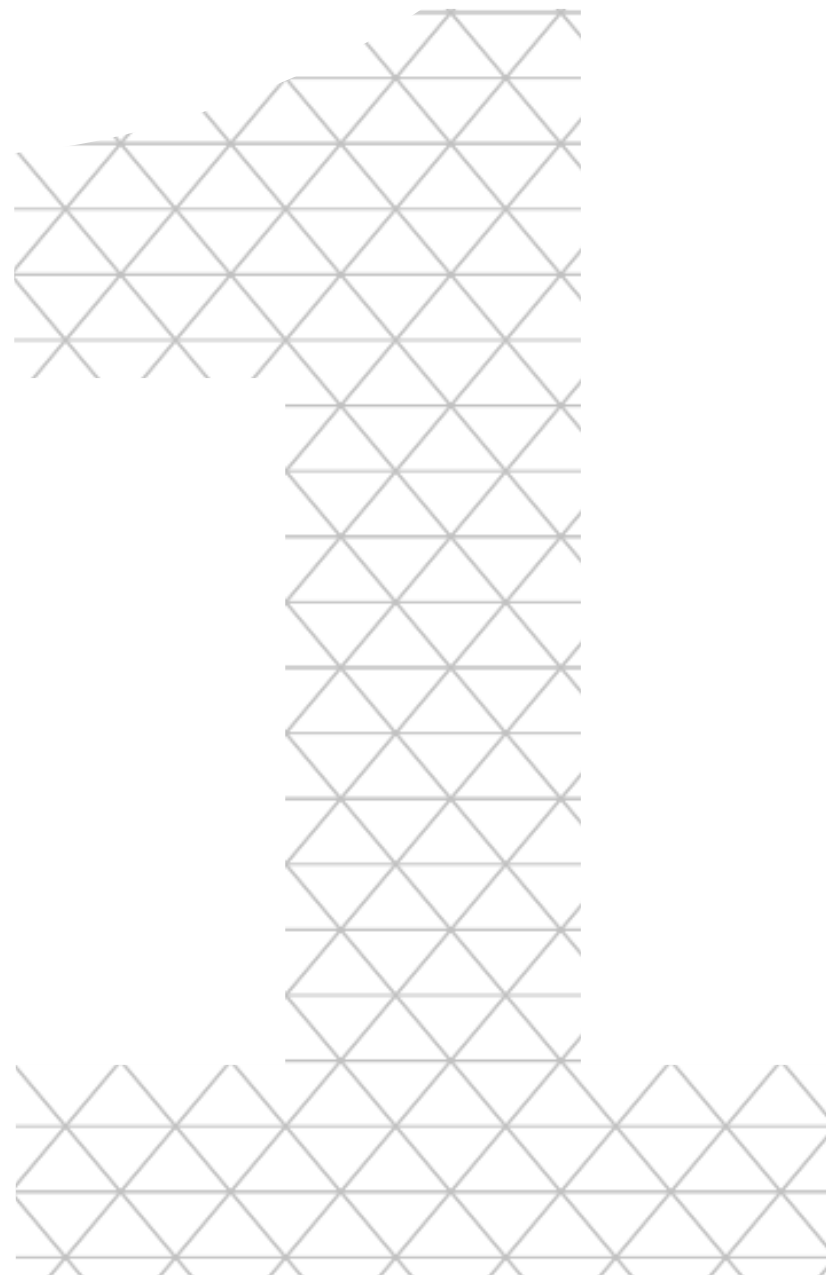
# what's inside

# getting started

company formation and  
foundation documents



# constitution



## what is it?

A constitution is a fundamental document that most NZ companies put in place to cover various governance aspects of the company.

## why would I need one?

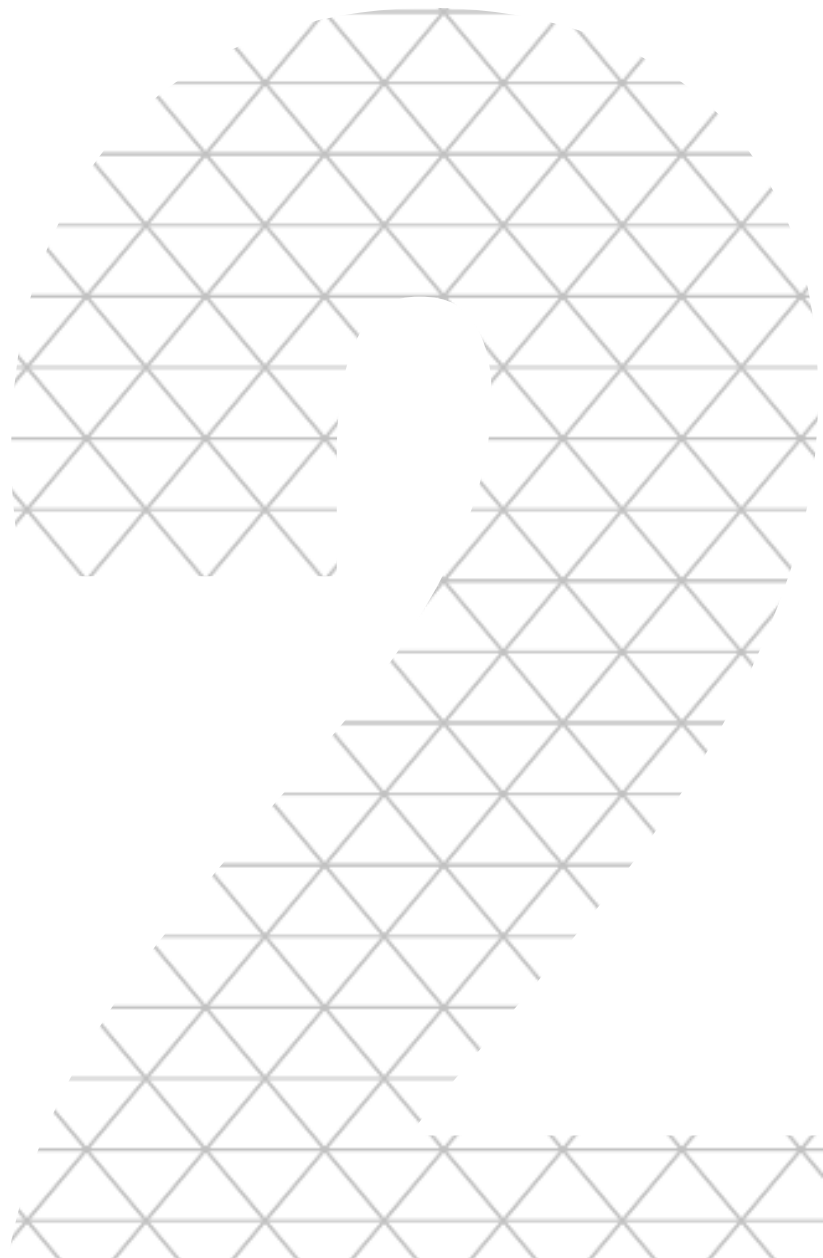
The Companies Act only lets a company take certain actions or avoid certain procedures where its constitution allows it to – such as buying back its own shares, issuing shares without offering them first to existing shareholders, or indemnifying its directors.

## what do I need to think about?

- New share issues: Should the board be required to first offer any new shares to existing shareholders?
- Restrictions on transfer: Do you want shareholders proposing to transfer shares to first offer those shares to existing shareholders? Do you want to have drag-along or tag-along rights binding shareholders?
- Board formalities: Are there any special voting powers at board meetings, how often are meetings held, and what is the quorum for meetings?

[Download our free constitution template here.](#)

# shareholders' agreement



## what is it?

An agreement that sets out matters relating to the governance and management of the company and the relationship between shareholders.

## why would I need one?

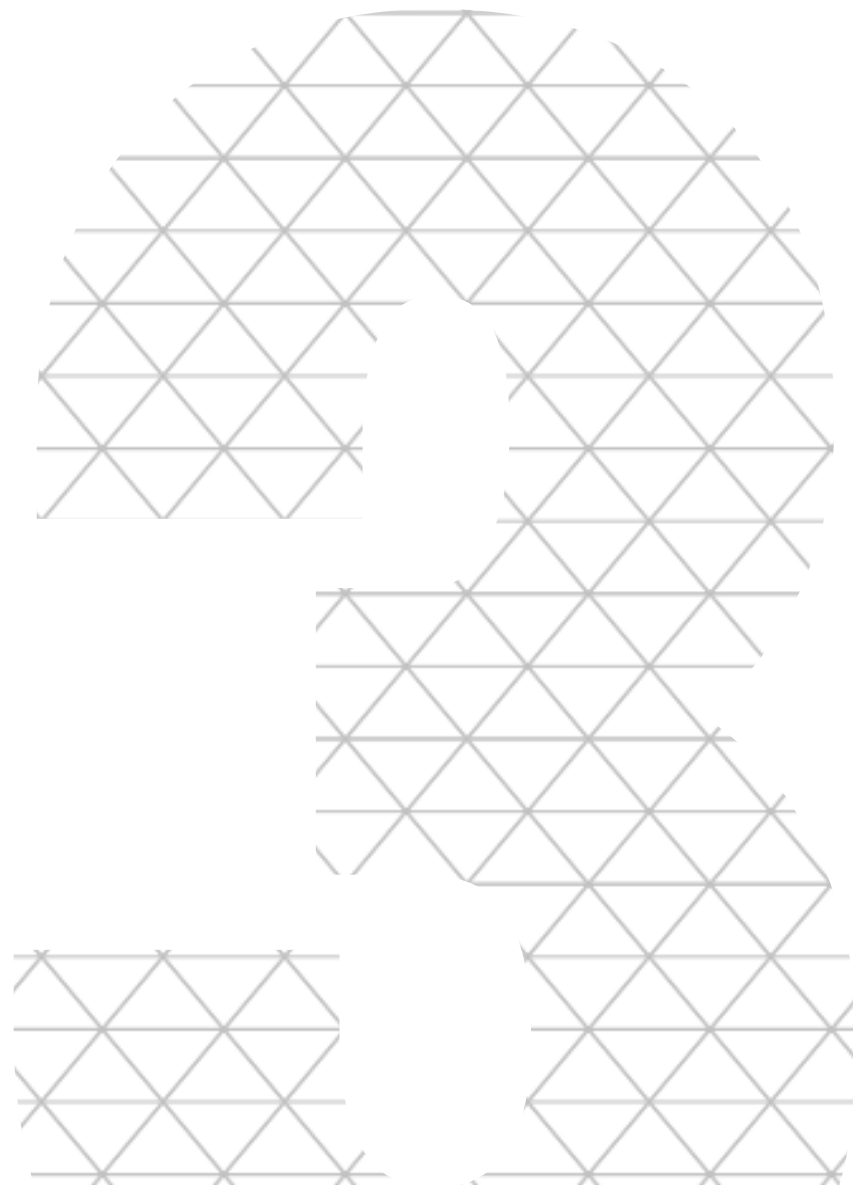
To supplement the constitution with additional provisions which typically fall outside of that document.

## what do I need to think about?

- Will certain board matters require the consent of some or all shareholders?
- Do you want a mechanism to help resolve disputes between shareholders?
- Will certain shareholders have a right to appoint a director?
- Do you intend to set up an ESOP?
- What information must be provided to shareholders?
- Will restraints of trade bind some or all shareholders?

[Download our free shareholders' agreement for product companies here.](#)

# founder agreement



## what is it?

Allows for a company to claw-back some or all of a co-founder's shares if he or she ceases to be involved in the business.

## why would I need one?

It enables startups to rebalance the cap table if founders move on by requiring a buy-back of unvested shares. This avoids difficult conversations at the time of the founder's exit, and ensures the company remains attractive to potential investors.

## when should I consider getting one?

As soon as you have incorporated a company and have more than one founder holding shares.

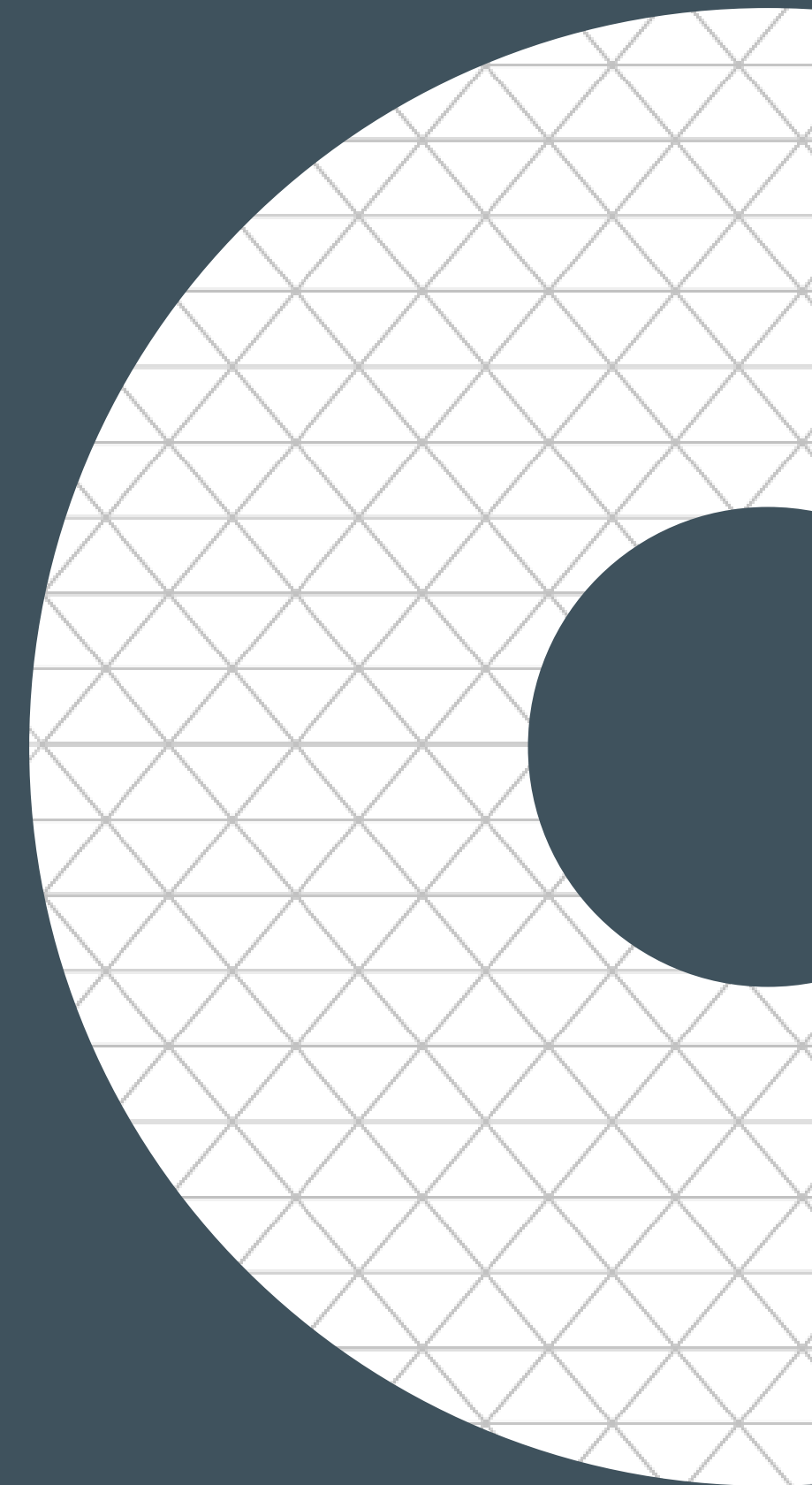
## what do I need to think about?

- KPIs: Whether there are certain milestones or an expected contribution that founders need to deliver, or whether the vesting is purely time-based.
- Vesting: How long will a founder have to continue working in the startup before all his or her shares vest? 2-4 years is most common.

[Download our free founder agreement template here.](#)

# commercial documents

important contracts and  
agreements for startups



# independent contractor agreement

## what is it?

An agreement covering the provision of services to a company by an independent contractor in return for payment (i.e. not an employee).

## why would I need one?

To document the terms of service (i.e. the scope of deliverables and the fees), and to ensure all intellectual property (IP) created by the contractor is sufficiently assigned to the company, and that the contractor agrees not to compete with the company if he or she moves on.

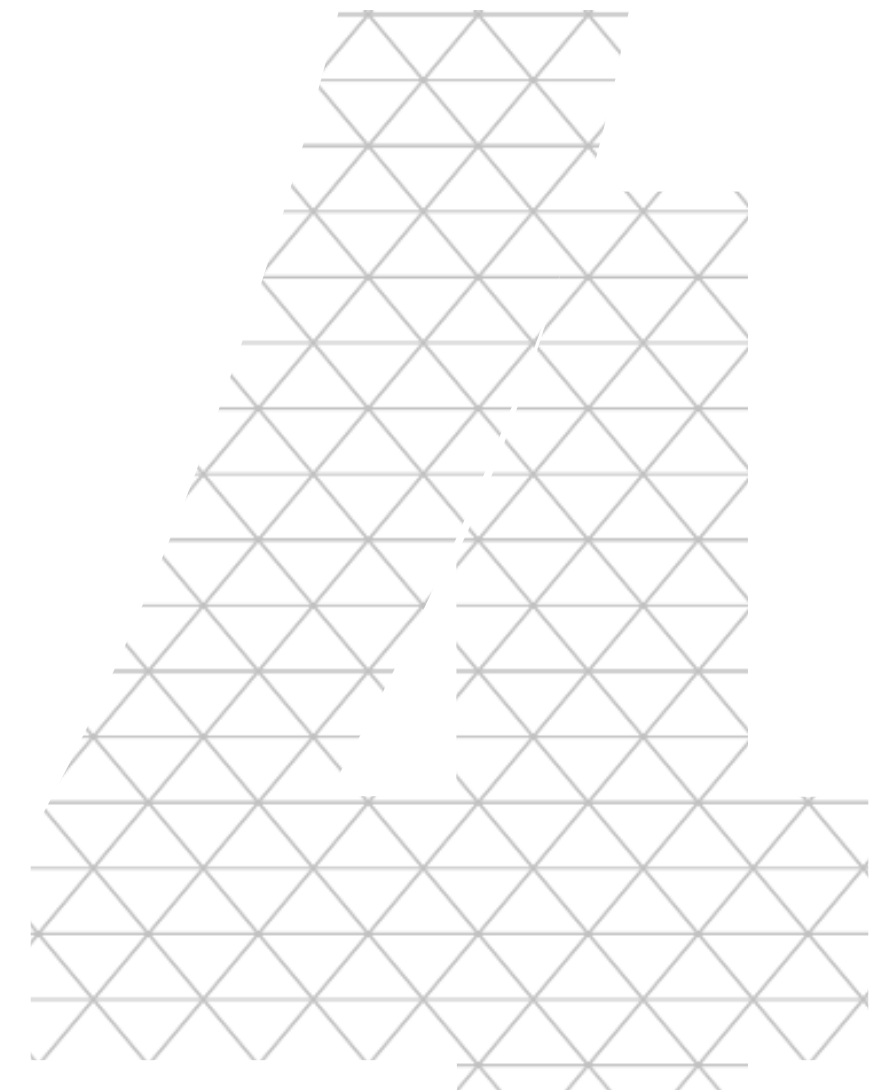
## when should I consider getting one?

Whenever you are paying an independent third party to provide services and it is not an employer-employee relationship.

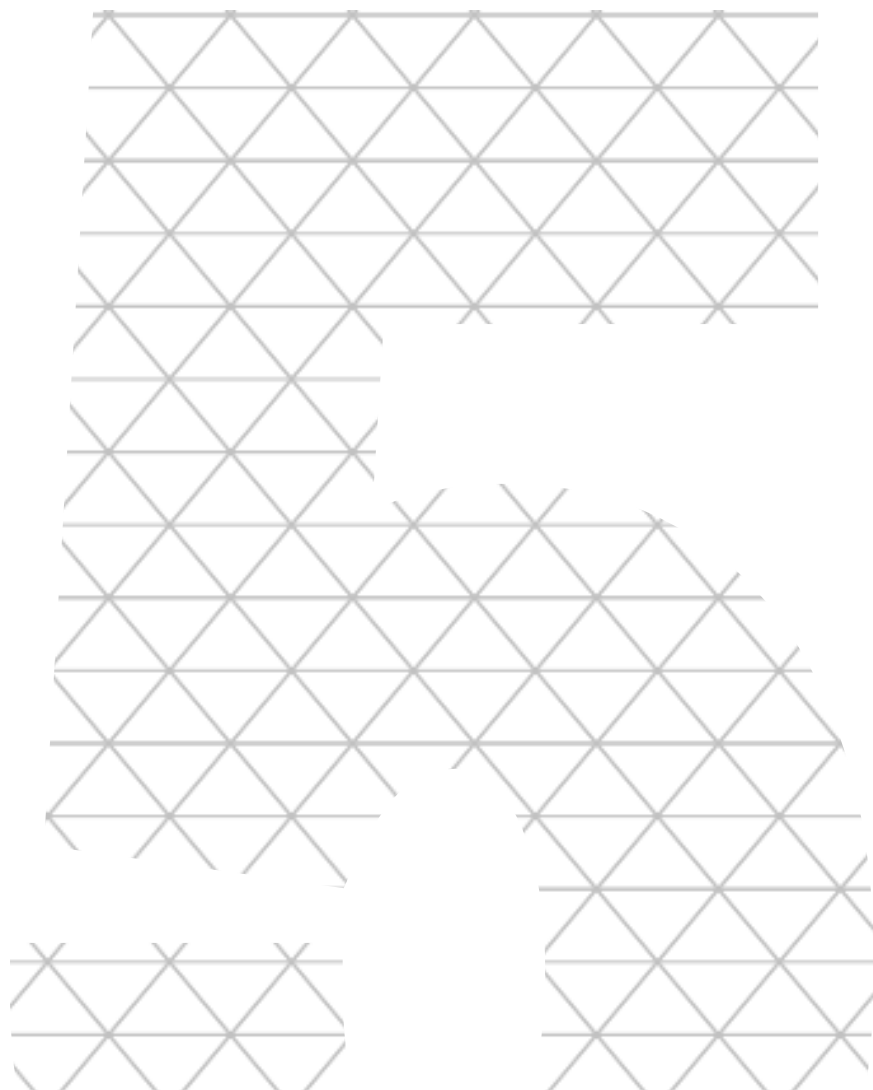
## what do I need to think about?

- Deliverables: The scope of what the contractor needs to deliver as part of the services.
- Termination right: The circumstances when the company can terminate - for example, serving notice in the event of breach.
- Remuneration: Whether the contractor is remunerated in cash or vested shares.
- IP and confidentiality: Ensuring IP and trade secrets are retained by the company.
- Restraints: The inclusion of non-compete/non-solicit provisions to protect the business.

[Download our free independent contractor template here.](#)



# IP assignment



## what is it?

A document that transfers intellectual property (IP) relevant to the business, products or services of a startup, from the founders (or other persons) to that startup.

## why would I need one?

If a startup doesn't own the IP on which its business is based, it cannot guarantee full access to that IP going forward and the IP may be licensed to other people (e.g. competitors).

You should ensure your startup holds all of its core IP before you raise your first round. Most investors will expect you to show that the startup owns the relevant IP before they invest.

## what do I need to think about?

- Complexity: If the business uses complex IP, you should consult an IP lawyer or patent attorney.
- Ownership: Who actually owns the IP that is being transferred and on what basis? e.g. the startup may already own its IP if it was created by its employees in the course of their employment.

[Download our free IP assignment template here.](#)

# privacy policy

## what is it?

A document that informs individuals (often customers) on how a person or company will handle their personal information, including when they collect it, to whom they can disclose it, what they can use it for, and how that information is otherwise managed.

## why would I need one?

If your startup collects personal information, you must comply with the Privacy Act and other applicable privacy law. This includes telling individuals how you will collect, use, disclose, and otherwise manage personal information about them. Properly informing an individual through a privacy policy of how you will collect, use, disclose and manage personal information, including getting relevant consents, is a simple way to comply with your privacy obligations.

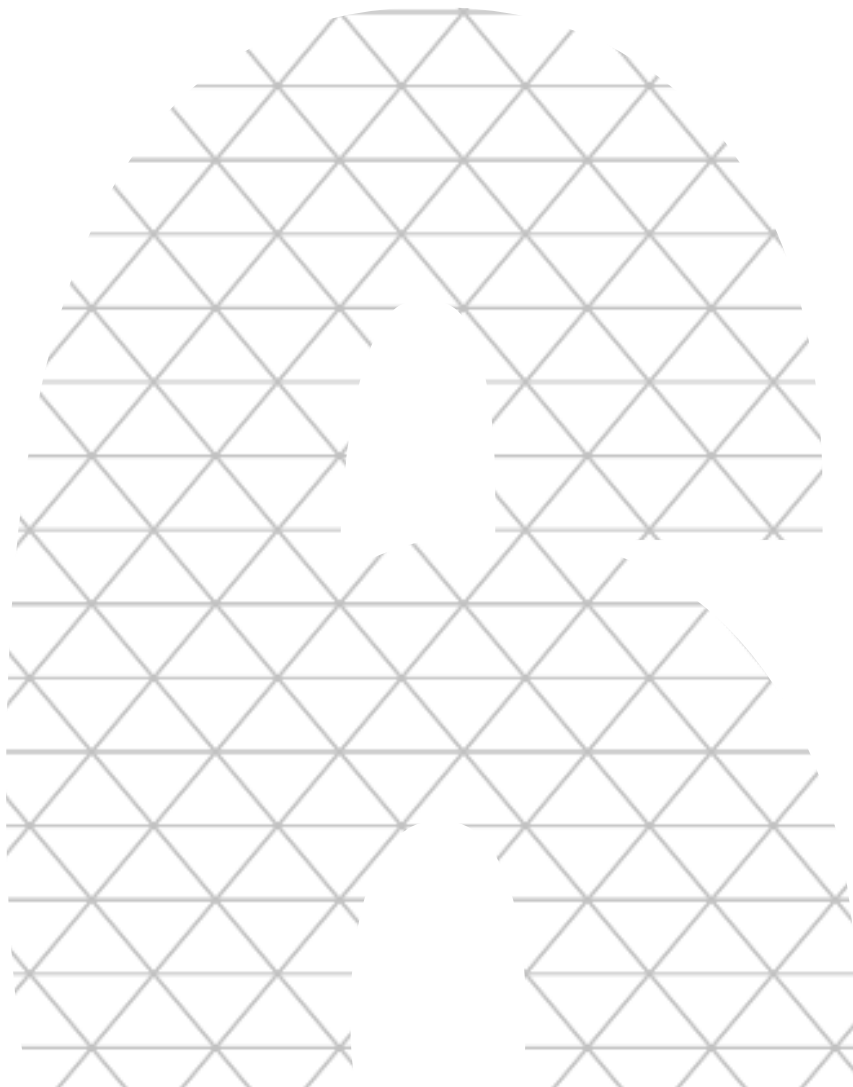
[Download our free privacy policy template here.](#)

## when should I consider getting one?

Before your startup starts collecting personal information.

## what do I need to think about?

- What personal information are you collecting? This will inform you of what your policy must cover. If that personal information is sensitive, e.g. health information or credit card information, you may need to include extra controls to protect that information.
- If you collect personal information from individuals offshore, chances are you'll need to comply with the privacy laws in the place of collection.
- If you don't collect much personal information, a full privacy policy may not be needed. In this case, you can include some privacy provisions in your website terms of use instead.



# website terms of use

## what is it?

An agreement that covers how website visitors or end users may interact with, or use, a website. Generally, there is no active agreement or sign-up to the terms of use. Instead, they automatically apply to someone who interacts with, or uses, the website.

Other names: terms of service, terms and conditions (T&Cs), terms of trade

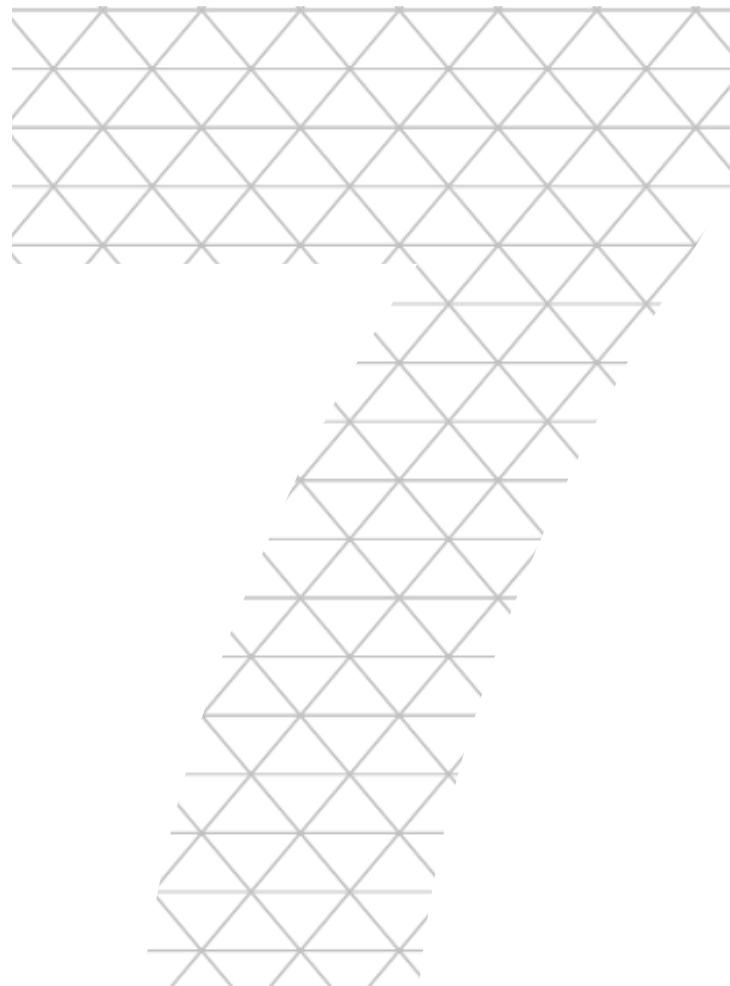
## when do I need one?

When your startup's website goes live.

[Download our free website terms of use template here.](#)

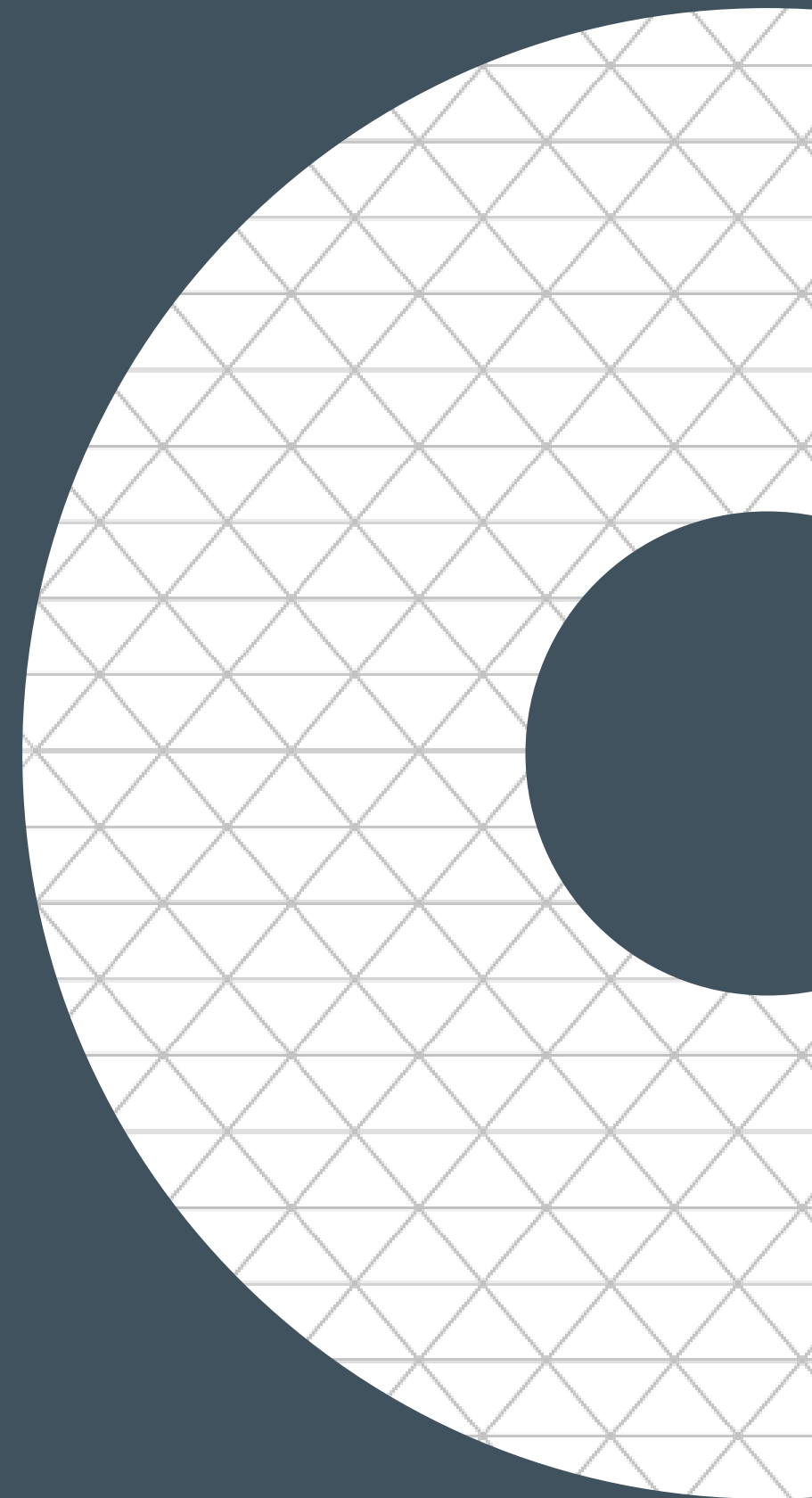
## what do I need to think about?

- Website features: What special features does your website have that you may want to address in your terms of use? E.g. do users create an account to access some parts of your website, or is there a forum/chat room? If so, your terms of use should set out how they may be used.
- Stickability: Because website terms of use are stated to automatically apply, this creates enforcement issues (e.g. how can you show a visitor or end user saw and agreed to the terms of use?). You should make sure the terms are prominently displayed on your website's homepage (and ideally on each page) so that it is easy for a visitor or end user to see the terms of use and understand that they apply.

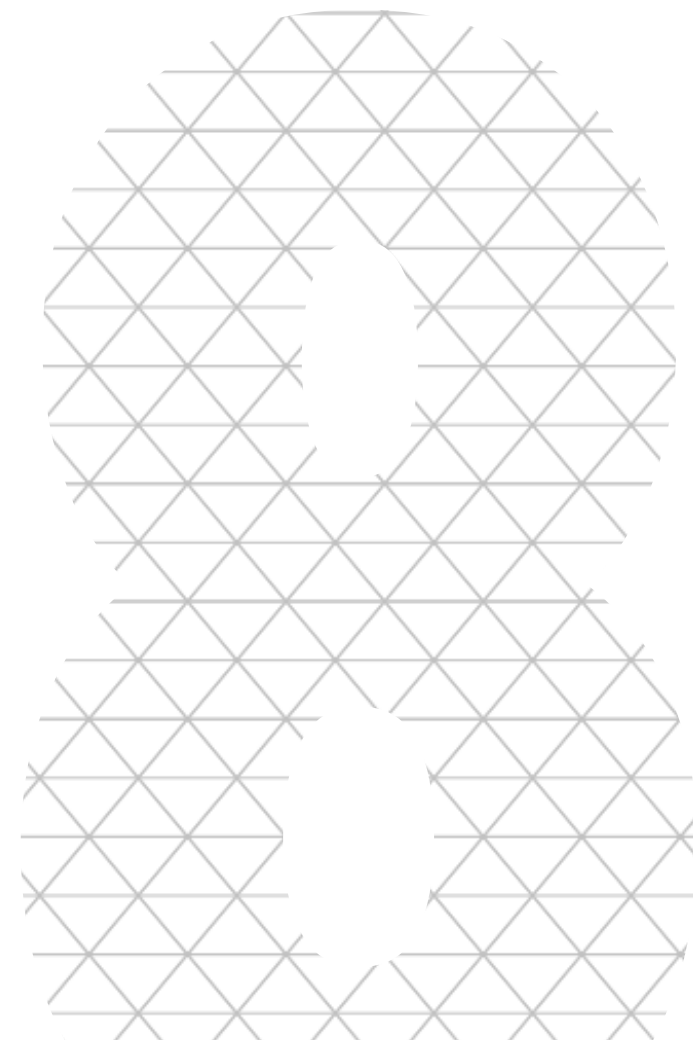


# growth stage

fundraising and ESOPs



# ESOP



## what is it?

A plan under which employees, directors, or contractors are issued options which are exercisable for shares in the company at an agreed exercise price.

## why would I need one?

To incentivise employees to stay with your company, and to attract new talent at a time when paying high salaries is not an option.

## when should I consider getting one?

ESOPs are commonly put in place early in a company's lifecycle – generally around the time of the company's seed or series A round.

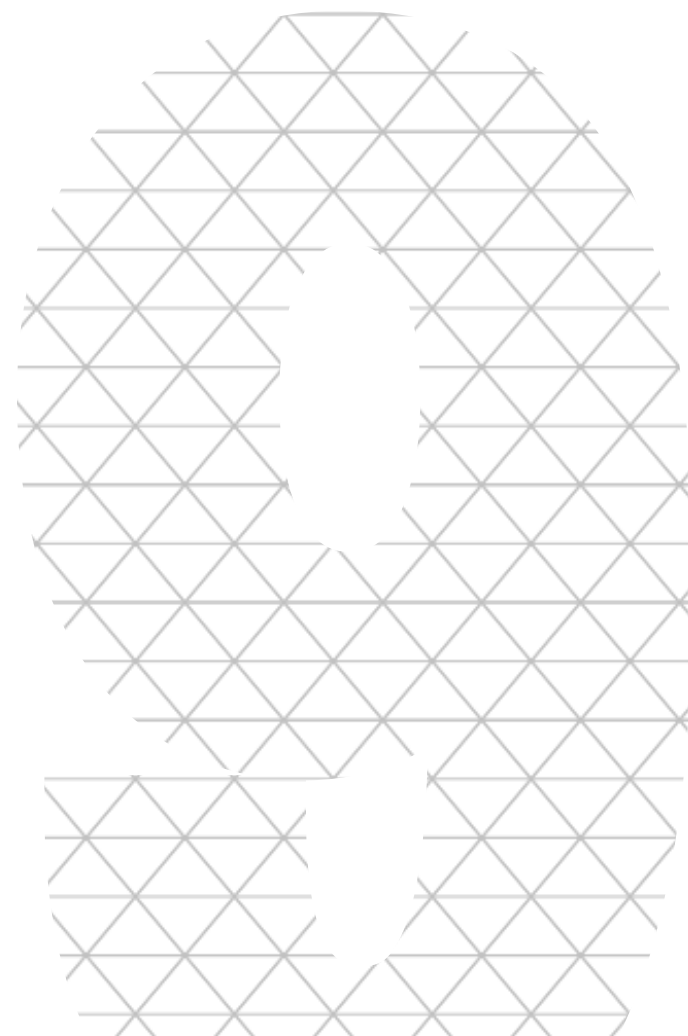
## what do I need to think about?

- exercise price: this is normally set at the market price of the company's shares at the time the options are granted, but could be lower. It can also vary for each recipient.
- vesting period: it is common to provide for options to vest over a 3 or 4 year period, sometimes with a one year "cliff".
- acceleration: what happens to vested and unvested options in certain circumstances, for example, on a liquidity event, or if the holder of the options ceases to work for the business?
- expiry: should the ESOP have an expiry date by which time all options should be exercised?

[Download our template ESOP here.](#)

# convertible note

There is a wide variety of terms that a convertible note can include.



## what is it?

An instrument under which an investor provides the company with an investment amount which converts into shares in the future based on certain events occurring (usually the next investment round).

## why would I need one?

To raise capital quickly without needing to agree a valuation and negotiate other matters which would typically be considered on an equity fundraising.

## when should I consider getting one?

When looking to raise a relatively small investment round with institutional investors, particularly if it is difficult to value the company at that point.

## what do I need to think about?

- Calculation of the conversion price: What price will the investor pay to convert the investment amount into shares - often based on a discount and/or a valuation cap.
- Repayment: When will the company need to repay the investor's investment amount?
- Most favoured nation: Some investors ask for the right to exchange their convertible note for any subsequent note issued afterwards on more favourable terms.
- Pro rata rights: Should investors have the right to invest more money in the next round to maintain their ownership percentage in addition to converting?

[Download our template convertible note here.](#)

# term sheet

## what is it?

A simple document that sets out the basic terms of a proposed capital raise using shares. The terms are usually not legally binding, except for confidentiality and exclusivity.

## why would I need one?

To help you negotiate the key terms of a capital raise on a non-binding basis, which can simplify the process of drafting “long-form” legal documents afterwards.

## when should I consider getting one?

Before you start to prepare any definitive transaction documents for an equity capital raise.

## what do I need to think about?

- Control rights: Will your investors have a right to appoint a director and/or have veto rights over certain board decisions?
- Economic rights: Will the shares issued to investors be ordinary shares or preference shares carrying liquidation preferences and/or anti-dilution rights?
- Tranches: Is the investment completed on a single closing or over a period of time? Are there any tranches and KPIs to be met for future funding?
- Warranties: It is standard to require the company to give warranties to investors, against which disclosures are made. Sometimes investors require the founders of the company to give warranties as well.

[Download our free seed term sheet template here.](#)

# kindrik partners

Kindrik Partners is a corporate/commercial law firm that specialises in working with growth stage technology companies. The firm advises on all aspects of venture capital fundraising, M&A transactions and commercial contracts.

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