



# U.S. JEWELRY COUNCIL

## USJC SOURCE WARRANTY PROTOCOL

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**Introduction:** this Source Warranty Protocol may be used by Industry Participants in their commercial arrangements for the purchase of Industry products or items containing Industry products from other Industry Participants and for the sale of Industry products or items containing Industry products to other Industry Participants.

The Protocol also implements the OECD Due Diligence Guidance for Responsible Supply Chains for Minerals from Conflict Affected and High Risk Areas.

The most recent Release of this Protocol is published by the U.S. Jewelry Council on its website [www.jewelrycouncil.org](http://www.jewelrycouncil.org) as well as by Jewelers of America on its website [www.jewelers.org](http://www.jewelers.org) and may be downloaded and used without charge.

**Subject Sources:** the determination of which countries, regions, mines or Persons are “Subject Sources” (as that term is used in this Protocol) will be made, from time to time, on a voluntary basis by Industry Participants through their commercial negotiations with one another.

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## Article I – Defined Terms

As used in this Protocol or in any Commercial Document incorporating this Protocol, the following initially capitalized words and phrases shall have the following meanings:

“Applicable Law” means all laws applicable to the Industry Participant or Independent Auditor in question.

“Audit Obligations” means Seller’s Audit Obligations as set forth in Article VI or Article VII below.

“Best Knowledge” means that a Person, after due inquiry, believes that a statement is true and has no reason to believe that it is untrue.

“Buyer” means an Industry Participant who is a buyer of Industry Products in a Commercial Transaction and who has received a Protocol Warranty from a Seller in such Transaction.

“Buyers’ Rights” means the rights of Buyers as set forth under Article V below.

“Certain Knowledge” means that a Person both knows and has evidence that a statement is true.

“Certificate of Origin” means the document issued by the original Mine Seller, detailing the location/name of the Mine where the precious metals/stones were extracted, the date which they were sold by the Mine, the exact weight/caratage of the precious metal/precious stone(s) as well as an approximate description of the shape, color and clarity of the precious stone(s).

“Commercial Contract” means a contractual arrangement between Industry Participant that evidences, anticipates or concludes a Commercial Transaction.

“Commercial Document” means any writing or electronic transmission that: evidences, anticipates or concludes a Commercial Transaction or that is a Source Document, including any agreement, memorandum of agreement, purchase order, blanket purchase order, blanket purchase agreement, purchase order acknowledgment, request for proposal, warranty, representation, certification, guaranty, import documentation, Kimberly Process certificate, packing list, invoice, bill of sale, memorandum of consignment, receipt, security or lien instrument, filing, and item of correspondence.

“Commercial Transaction” means a sale of an Industry Product in which one Industry Participant is the Buyer and another Industry Participant is the Seller.



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“Confidentiality Covenants” means the obligation of an Independent Auditor to keep Confidential Information confidential except when required to disclose such information under Applicable Law.

“Confidential Information” means (i) the identity of Seller’s Suppliers; (ii) the price at which Industry Products were sold by Seller’s Supplier to Seller, including the extended price and the per unit price; (iii) payment and delivery terms with respect to such sale; and (iv) Observed Process Information except, in respect of items (i) through (iii), such information that (a) was already known to the Independent Auditor, such prior knowledge being documented and having been obtained without breach of any confidentiality obligation; (b) has been publicly disclosed by the owner of such Confidential Information or (c) is widely known among Industry Participants.

“Contract Law” means the law applicable to the formation, enforceability and interpretation of a specific Commercial Contract or governing a specific Commercial Transaction.

“Control” means the ability of one Person to control a second Person through an employment arrangement, through majority ownership of the voting stock of such second Person, or through the ability to appoint a majority of the directors of such second Person, provided that engagement of a Person as an Independent Auditor shall not constitute Control of such Person.

“Document Retention Period” means the greater of (i) two years following the Commercial Transaction to which a Commercial Document relates and (ii) the period required by Applicable Law.

“Due Diligence” is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict. Due diligence can also help companies ensure they observe international law and comply with domestic laws, including those governing the illicit trade in minerals and United Nations sanctions. Risk-based due diligence refers to the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions. (OECD DDG P13)

“Entity” means a company or group of companies, or other alternative arrangements (which may extend beyond traditional company structures e.g. partnerships, including control by an individual or a family where applicable). An Entity may have one or more Facilities.

“Facility” means any individual mine, building, office, factory, shop or any other place of business that is either geographically independent or has its own independent management.

“Independent” means, with respect to one Person and the relationship of that Person to a second Person, free from the Control of such second Person and having no material



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relationship with such second Person (either directly or indirectly), provided that a Person who serves as the independent registered public accounting firm of a second Person which is a publicly-traded company shall be deemed Independent of such second Person and the Affiliates of such Person.

“Independent Auditor” means an auditing, accounting or investigatory firm that is Independent from the Person who has hired the firm and has agreed to comply with the Confidentiality Covenants for the benefit of Seller.

“Industry Participant” means a Person who, in the regular course of its business, produces or buys Industry Products for sale or resale. For the avoidance of doubt, the term “Industry Participant” does not include reference to a retail consumer.

“Industry Product” means unrefined or refined precious metals, rough or polished precious stones [either natural or laboratory-grown], natural or cultured pearls, an item of jewelry, and any other item embellished with precious metals, precious stones or pearls, such as a watch.

“Internationally Recognized Trade Descriptors” means any trade descriptor recognized by the US Federal Trade Commission Jewelry Guides or the CIBJO “Blue Books”.

“Inventory Control Procedures” means record-keeping and physical control policies and procedures with respect to a Seller’s acquisition, disposal, inventory and Processing of Industry Products.

“OECD” is the Organisation for Economic Co-operation & Development. See the Due Diligence Guidance for Responsible Supply Chains for Minerals from Conflict-Affected and High-Risk Areas “OECD DDG” [see [Guidelines for MNEs - Organisation for Economic Co-operation and Development \(oecd.org\)](#)].

“Person” means a natural person, a corporation, a partnership, a limited partnership, a trust, a limited liability company and any other form of business organization.

“Precious Stone” means any gemstones [previously referred to as either precious or semi-precious] used in jewelry; including aquamarines, citrines, diamonds, rubies, sapphires, tanzanites or topaz.

“Precious Metal” means any gold, silver, platinum, palladium or rhodium, either pure or as part of an alloy.

“Processed” and “Processing” means, with reference to a precious stone, operations performed upon the precious stone, including sawing, cutting, polishing, grading or assorting and, with reference to a precious metal, operations performed upon the precious metal, including smelting, refining, casting or assaying and, with an item containing industry products,



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operations performed to create or complete the item, including fabricating, molding, machining, setting, assembling, polishing or inspecting.

“Protocol” means this Source Warranty Protocol, Release Number 2.0.

“Protocol Commencement Date” means [January 1, 2022].

“Protocol Warranty” means a Negative Warranty concerning an Industry Product which (i) is given with reference to this Protocol, (ii) provides for the recovery of Warranty Damages for its breach and (iii) survives delivery of the Industry Product in question.

“Mine” means the originating location from which the precious metal or precious gemstone was mined or otherwise removed from the earth, the rivers, waters or the seabed of a particular country.

“Negative Warranty” means a warranty from a Seller to a Buyer that an Industry Product was not, to the Best Knowledge of Seller, Obtained from or Processed by, and does not contain Industry products Obtained from or Processed by, a Subject Source.

“Observed Process Information” means confidential business processes and procedures that have been observed by an Independent Auditor at a Seller’s facility and which provide the operator of such facility a business advantage.

“Obtained” means, with reference to precious metals or precious stones, that it was mined or otherwise removed from the earth, the rivers, waters or the seabed of a particular country, region or mine or that it was purchased or otherwise obtained from a particular Person.

“Owner” means the person who actually owns the industry product. For avoidance of doubt, an Owner may not be a person that has the industry product in its possession under consignment or “memo”<sup>1</sup>

“Ownership or Control” means

- direct or indirect ownership or control (alone or pursuant to an agreement with other members), of fifty (50) percent or more of the voting equities/rights (or equivalent) of the controlled Entity/Facility; and/or
- direct or indirect (including pursuant to an agreement with other members) power to remove, nominate or appoint at least half of the members of the board of the directors or management (or equivalent) of the controlled Entity/Facility; or

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<sup>1</sup> ‘Memo’ is the accepted industry practice of consigning gemstones or jewelry to other persons for pre-arranged periods for potential sale, without an actual sale having taken place.



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- the ability (either directly or indirectly), including pursuant to an agreement with other members, to control a majority of voting rights in and/or the management of the controlled Entity/Facility; or
- day-to-day or executive management of the controlled Entity/Facility; or
- any legally recognized concept of “control” analogous to those described in the bullet points above in a relevant jurisdiction.

The above definition of “control” specifically defines “control” in a corporate context but, in light of differing arrangements of potentially Assessable Entities (which may extend beyond traditional company structures e.g. partnerships, including control by an individual or a family where applicable); the same principles as are set out in this definition of Ownership or Control will apply by analogy to other arrangements.

“Qualified Audit Certificate” means a document, addressed to a Buyer, issued by an Independent Auditor attesting to the following:

- That it is an Independent Auditor under the terms of this Protocol;
- That the Independent Auditor has completed a review of Seller’s Inventory Control Procedures within the past [year];
- That Seller’s Inventory Control Procedures constitute Qualified Inventory Control Procedures;
- That, based upon such review, Seller consistently applies its Inventory Control Procedures.

“Qualified Inventory Control Procedures” (QICP) means Inventory Control Procedures as described in Articles XI through XV.

“SDNBP” means a Person who is designated as a “Specially Designated National and Blocked Person” by the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of Treasury.

“Seller” means an Industry Participant who is the seller of Industry Products in a Commercial Transaction.

“Seller’s Obligations” means the representations and obligations of a Seller who has provided a Protocol Warranty, as set forth in Article IV below.

“Seller’s Supplier” means any Industry Participant that has supplied Industry Products to a Seller that has given a subsequent Protocol Warranty with respect to (i) the Industry Products supplied by such Industry Participant or (ii) Industry Products into which such prior-supplied Industry Products have been incorporated.



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“Source Document” means any Commercial Document or other instrument, certificate or report that affirmatively evidences where an Industry Product was Obtained or Processed. The term Source Document includes Kimberly Process Certificates.

“Subject Source” means (i) a country, region, Mine or Person that is designated a Subject Source under a Commercial Contract, a Commercial Document or in a Protocol Warranty and (ii) any Person who, is at any relevant time, an SDNBP.

“Warranted Products” means Industry Products that are the subject of a Protocol Review.

“Warranty Damages” means the difference in value between an Industry Product that bears a Protocol Warranty and that same Industry Product if it were sold without a Protocol Warranty.



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## Article II – Rules of Construction

- 2.1 *Release Numbers.* When the term “Source Warranty Protocol” is used in a Commercial Document without reference to a Release Number, the user shall be deemed to be referring to the most current Release Number as of the date such Commercial Document is issued. When Industry Participants conclude a Commercial Contract that incorporates or otherwise references “USJC Source Warranty Protocol”, they will be deemed to be referring to the most current Release Number as of the date such binding arrangement is entered into. When a Release Number is specified, the provisions such Release shall be deemed referred to, notwithstanding subsequent Releases.
- 2.2 *Use of Defined Terms.* Unless otherwise defined or the context otherwise requires, a term defined in Article I above shall have such meaning when used in any notice or other communication delivered from time to time in connection with any Commercial Document that incorporates this Protocol.
- 2.3 *Headings Etc.* The division of this Protocol into Articles, Sections, subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Protocol.
- 2.4 *Number and Gender.* In this Protocol the singular shall include the plural, the plural shall include the singular and the neuter shall include both the masculine and the feminine.
- 2.5 *Severability.* If any provision of this Protocol is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect: the legality, validity or enforceability of the remaining provisions of this Protocol or the legality, validity or enforceability of that provision in any other jurisdiction.
- 2.6 *Good Faith.* All obligations under this Protocol shall be undertaken in good faith.
- 2.7 *Reasonableness.* Whenever in this Protocol it is provided that a Person may request something of another Person, and no specific time or schedule is provided for herein, such provision is assumed to afford the other a reasonable period of time to perform. For this purpose, a “reasonable period of time” means a period of time consistent with the urgency of the request and the demands of ongoing business operations.
- 2.8 *Use of Examples.* Whenever in this Protocol the phrase “such as” is used, it shall be construed to include the qualifier “but not limited to”.





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## Article III – Incorporation of Protocol by Reference

- 3.1 Buyers and Sellers may incorporate this Protocol into a Commercial Contract or a Commercial Document by reference.
- 3.2 In order to incorporate this Protocol and provide a Protocol Warranty in a Commercial Document relating to the sale of un-set precious stones or precious metal bullion, a statement substantially as follows must be included in the Commercial Document:

*“To Seller’s Best Knowledge, Industry Products supplied under this [insert name of Commercial Document] were not [Obtained from] [Processed by] [insert description of Subject Source]. This Warranty is given under USJC Source Warranty Protocol, Release Number 2.0.”*

Unless the statement is issued by the originating mine, at which point a statement substantially as follows must be included in the Commercial Document:

*“To Seller’s Certain Knowledge, Industry Products supplied under this [insert name of Commercial Document] were legally mined at [insert location/name of Mine(s)]. This Warranty is given under USJC Source Warranty Protocol, Release Number 2.0.”*

- 3.3 In order to incorporate this Protocol and provide a Protocol Warranty in a Commercial Document relating to the sale of jewelry items set with precious stones or incorporating precious metals, a statement substantially as follows must be included in the Commercial Document:

*“To Seller’s Best Knowledge, Industry Products supplied under this [insert name of Commercial Document] do not contain precious stones or precious metals that were [Obtained from] [Processed by] [insert description of Subject Source]. This Warranty is given under USJC Source Warranty Protocol, Release Number 2.0.”*

- 3.4 When this Protocol has been incorporated into a Commercial Contract by reference, or when a Seller provides a Protocol Warranty in a Commercial Document, Seller undertakes Seller’s Obligations under this Protocol and Buyer will obtain Buyers’ Rights under this Protocol.

## Article IV – Seller’s Obligations



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When Seller gives a Protocol Warranty, Seller shall be deemed to have made the following representations, warranties and agreements to and for the benefit of Buyer with respect to the Warranted Products:

- 4.1 Seller is giving Buyer its Protocol Warranty on its Best Knowledge and on the basis of (i) a Protocol Warranty previously given to Seller as to the same Subject Source or (ii) Source Documents of which Seller has had sight;
- 4.2 To Seller's Best Knowledge, items (i) and (ii) in Section 4.1, as applicable, are true;
- 4.3 Seller had in place, at all times relevant to the Protocol Warranty given by Seller to Buyer, Qualified Inventory Control Procedures sufficient so that Seller could give such Protocol Warranty;
- 4.4 Seller will retain all Commercial Documents relevant to the Protocol Warranty given for the Document Retention Period; and
- 4.5 Seller will perform its Audit Obligations.
- 4.6 Seller undertakes that due diligence has been applied to the seller's industry product supply chain in accordance with the OECD DDG. Where risks are identified by the due diligence process, seller undertakes that the risks have been appropriately mitigated.

## Article V – Buyer's Rights

Unless specified otherwise in a Commercial Contract, this Article V states Buyer's rights when Buyer has received a Protocol Warranty:

- 5.1 Buyer shall have the right to recover Warranty Damages for breach of the Protocol Warranty.
- 5.2 If Seller breaches the Protocol Warranty, or any of its other obligations under Article IV, Buyer shall have such rights as afforded by Contract Law.
- 5.3 No action under Sections 5.2 or 5.3 above may be initiated by Buyer more than [three] years following delivery of the Warranted Products.
- 5.4 Rights under a Protocol Warranty will survive delivery of the Industry Products as to which it is given.
- 5.5 Buyer shall have the rights stated under Articles VI and VII below, as applicable.



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## **Article VI – Audit Obligations (Seller-Employed Auditor)**

Unless “Buyer-Employed Auditor” is specified in a Commercial Contract, this Article VI states Seller’s Audit Obligations.

- 6.1 Seller will, on, or promptly following, shipment of Industry Products that are subject to a Protocol Warranty, provide Buyer with a Qualified Audit Certificate.
- 6.2 Seller will bear all costs of under this Article VI.
- 6.3 For the avoidance of doubt, Industry Participants who enter Commercial Contracts or engage in Commercial Transactions on the basis of Commercial Documents that provide a Protocol Warranty will be subject to this Article VI unless the Commercial Contract between specifies “Buyer-Employed Auditor”.

## **Article VII – Audit Obligations (Buyer-Employed Auditor)**

If “Buyer-Employed Auditor” is specified in a Commercial Contract, this Article VII states Seller’s Audit Obligations.

- 7.1 Seller will permit an Independent Auditor designated by Buyer access to Seller’s facilities, its records and its Inventory Control Procedures in order that such Independent Auditor may conduct a review sufficient to issue a Qualified Audit Certificate.
- 7.2 Such a review must be preceded by written notice of no less than five business days and may be conducted prior to or within one (1) year following delivery of Warranted Products to Buyer.
- 7.3 Seller will cooperate in all reasonable respects in order that such a review may be accomplished promptly and without excess cost.
- 7.4 Unless expressly agreed otherwise, Buyer will bear all costs of the review referred to in this Article VII.

## **Article VIII – Variation of Protocol**



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- 8.1 Except as provided in Section 8.2 below, any provision of this Protocol may be varied by an express, written provision of a Commercial Contract or a Commercial Document that expressly references this Protocol and expressly states that a particular provision of this Protocol is to be varied. Failing such an express written variation, the terms of this Protocol shall override and be construed to negate, to the fullest extent permissible under Contract Law the conflicting terms or contradictory provisions in a Commercial Contract that incorporates this Protocol by reference, or in a Commercial Document that provides a Protocol Warranty.
- 8.2 Notwithstanding Section 8.1 above, no variation shall limit or otherwise deprive a Buyer of the right to recover Warranty Damages for breach of a Protocol Warranty, although Contract Law, the provisions of a Commercial Contract or both may permit a Buyer to recover other or greater damages.

## **Article IX – Diamonds First Obtained Before 2003**

For the purposes of any Protocol Warranty, a Diamond that was first Obtained before January 1, 2003 [the implementation date of the Kimberley Process] will not be deemed to have been Obtained from a Subject Source and Seller may give a Protocol Warranty with respect to a Diamond if, to Seller’s Best Knowledge, such Diamond was not first Obtained on or after that date.

## **Article X – Industry Products Processed Pre Protocol Commencement Date**

For the purposes of any Protocol Warranty, an Industry Product that was Processed prior to the Protocol Commencement Date will not be deemed to have been Processed by a Subject Source and Seller may give a Protocol Warranty with respect to an Industry Product if, to Seller’s Best Knowledge, such Industry Product was not Processed on or after the Protocol Commencement Date.



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## Article XI – QICP General

Qualified Inventory Control Procedures must always be able to be traced back to original Mine source, in order to provide assurance that no industry product is from a Subject Source or SDNBP.

In order to incorporate Qualified Inventory Control Procedures and provide a Protocol Warranty in a Commercial Document relating to the sale of Industry products, whether un-set or set in an item, the following statements must be included in the Commercial Document:

- 11.1 Date of sale;
- 11.2 Exact weight (caratage) (to two decimal places) of the industry product being sold;
- 11.3 Physical description of the industry product being sold, including all relevant internationally recognized trade descriptors, as well as a description of the industry product if set in jewelry. If the industry product is in a parcel, or one industry product of several set in an item of jewelry, the physical description must be in accordance with internationally recognized trade descriptors for the industry product in the parcel or item;
- 11.4 Name and contact details of the Seller;
- 11.5 Name and contact details of the Buyer;
- 11.6 Reference number of the sale or Commercial Document.

## Article XII – Mine Origin

When Seller gives a Protocol Warranty of Mine Origin, the Seller shall be deemed to have made the following representations, warranties and agreements to and for the benefit of Buyer with respect to the Warranted Products:

- 12.1 Mine Seller is giving Buyer its Protocol Warranty on its Certain Knowledge that the industry products were mined or otherwise extracted at the Mine or collection of Mines that are under the Ownership or Control of the Mine Seller, none of which are Subject Sources and none of which are SDNBPs;
- 12.2 Mine Seller is giving Buyer its Protocol Warranty on its Best Knowledge that it is licensed to mine industry products at the Mine;



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- 12.3 Mine Seller will provide Buyer with a Certificate of Origin, detailing the originating Mine or collection of Mines from which the industry products have been extracted, the date at which it has been sold by the Mine Seller, and the exact weight/caratage and approximate physical description of the industry product being sold, using accepted industry descriptors;
- 12.4 Seller had in place, at all times relevant to the Protocol Warranty given by Seller to Buyer, Qualified Inventory Control Procedures sufficient so that Seller could give such Protocol Warranty;
- 12.5 Seller will retain all Commercial Documents relevant to the Protocol Warranty given for the Document Retention Period; and
- 12.6 Seller will perform its Audit Obligations.

## Article XIII – QICP Trading & Manufacturing

At any stage of trading or manufacturing of an industry product that has a Protocol Warranty, that industry product may be mixed with any other industry product that has a Protocol Warranty to form a larger parcel or to set in an item, and that new parcel or item may be issued with a new Protocol Warranty, subject that:

- 13.1 Only the Owner of the industry product may be allowed to mix industry products from different shipments or parcels that have USJC Source Protocol Warranties.
- 13.2 Seller will keep accurate and auditable records of which industry products subject to a Protocol Warranty are mixed with which other industry products subject to a Protocol Warranty. These records will include when the industry products were mixed, the details of the weight/caratages of the originating shipments/parcels and from which previous Seller the industry products have originated, together with copies of the previous Seller's Commercial Documents, as well as the weight/caratage of the new parcel/item of jewelry;
- 13.3 Seller will retain all records of the mixing of all industry products subject to a Protocol Warranty for the Document Retention Period; and
- 13.4 Seller will perform its Audit Obligations.

If at any stage of trading or manufacturing, an industry product that has a Protocol Warranty is mixed with any industry product that does NOT have a Protocol Warranty to form a larger



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parcel or to be set in an item, then that new parcel or item may NOT be issued with a new Protocol Warranty.

## **Article XIV – QICP Record Keeping**

- 14.1 Records must be kept, either on paper or by electronic means.
- 14.2 Buyer and Seller will ensure duplicate backup records are kept of all Commercial Documents and of all records of mixing of industry products, for the Document Retention Period. These backup records will be kept at a different location to the primary records.
- 14.3 Buyer and Seller will ensure that they keep copies of all Qualified Audit Certificates.

## **Article XV – QCIP Auditing & Qualified Audit Certificate**

- 15.1 Independent Auditor may only issue a Qualified Audit Certificate if the Independent Auditor has seen the Qualified Audit Certificates of all the previous Sellers that have supplied the Seller with Industry products, whether un-set or set in an item, with USJC Source Protocol Warranties.